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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1324; Directorate Identifier 2011–NM–104–AD; Amendment 39–16983; AD 2012–06–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, Model A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes), and Model A310 series airplanes. The agency docket number specified throughout the final rule is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective April 25, 2012.

ADDRESSES: 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 address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2012–06–02, Amendment 39–16983 (77 FR 16430, March 21, 2012), currently requires replacing a certain aluminum high pressure pipe with a new corrosion resistant stainless steel pipe, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, Model A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes), and Model A310 series airplanes.

As published, the agency docket number specified throughout the AD is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains April 25, 2012.

Correction of Non-Regulatory Text

In the **Federal Register** of March 21, 2012, AD 2012–06–02, Amendment 39–16983 (77 FR 16430), is corrected as follows:

On page 16430, in the second column, change the docket number to read as follows:

''[Docket No. FAA–2011–1324; Directorate Identifier 2011–NM–104–AD; Amendment 39–16983; AD 2012–06–02]''

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of March 21, 2012, AD 2012–06–02, Amendment 39–16983 (77 FR 16430), on page 16431, in the third column, the product identification line of AD 2012–06–02 is corrected to read as follows:

* * * * *

2012–06–02 Airbus: Amendment 39–16983, Docket No. FAA–2011–1324; Directorate Identifier 2011–NM–104–AD.

* * * * *

Issued in Renton, Washington, on April 13, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9576 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB58

Changes to the Labor Certification Process for the Temporary Non-Agricultural Employment of H–2B Aliens in the United States; Revisions to Transition Period

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Guidance.

SUMMARY: On February 21, 2012, the Department of Labor (the Department or DOL) published a Final Rule amending H–2B regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal non-agricultural employment. On March 20, 2012, the Department published guidance informing employers of the dates by which their H–2B application must be postmarked in order to be governed by the Final Rule. This guidance revises these dates so that the Final Rule will become operative 60 days after it was reported to Congress.

DATES: This guidance is effective April 23, 2012.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 21, 2012, the Department published a Final Rule amending the H–2B regulations at 20 CFR part 655, Subpart A. 77 FR 10038, Feb. 21, 2012. The Final Rule provides for an effective date of April 23, 2012, which is 60 days after the date of publication of the Final Rule. On March 20, 2012, 77 FR 16157, the Department published guidance which provided that applications filed under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes, 73 FR

78020, December 19, 2008 (the current regulation), must be sent to the Office of Foreign Labor Certification's (OFLC's) Chicago National Processing Center (CNPC) and postmarked no later than midnight April 22, 2012, the last day before the effective date of the H–2B Final Rule. The guidance also provides that applications postmarked on or after April 23, 2012 will be adjudicated in accordance with the requirements described in the Final Rule.

The Department is revising its guidance to clarify that the Final Rule will not be operative until April 27, 2012. In accordance with the Congressional Review Act, (CRA), 5 U.S.C. 801, et seq., April 27, 2012 is 60 days after February 27, 2012, the date on which the rule was reported to Congress, and the earliest date on which the rule can become operative under the CRA. See 5 U.S.C. 801(a)(3). While section 801(a)(3) does not alter the date a rule goes into effect, it prevents an agency from enforcing the rule for 60 days after the rule is reported to Congress.

Accordingly, applications filed under the current regulation must be sent to the CNPC and postmarked no later than midnight April 26, 2012, and applications postmarked on or after April 27, 2012 will be adjudicated in accordance with the requirements described in the Final Rule. Any application filed under the current regulation that is postmarked on or after April 27, 2012 will be returned, and the employer (and its agent or attorney) informed of the need to file a new application in accordance with the provisions of the new H–2B Final Rule.

Please note that, as provided in the March 20th guidance, employers who file H–2B applications with a start date of need before October 1, 2013 will not be required to obtain the pre-approved H–2B registration under 20 CFR 655.15, and the Department will continue to adjudicate temporary need during the processing of applications by reviewing the employer's statement of temporary need in Section B of the ETA Form 9142. Employers with H–2B applications postmarked on or after April 27, 2012 with a start date of need on or after October 1, 2013, must comply with all the requirements contained in the registration process unless the OFLC publishes additional guidance in the **Federal Register**.

Employers with questions are encouraged to submit their questions to *H-2B.Regulation@dol.gov.* The Department will provide responses in the form of Frequently Asked Questions (FAQs) on its Web site.

Signed in Washington, this 17th day of April 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–9612 Filed 4–20–12; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs for Use in Animal Feeds; Tiamulin

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 a supplemental new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The supplemental NADA provides for approval of a new concentration of a Type A medicated article.

DATES: This rule is effective April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, email: *cindy.burnsteel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc. (Novartis), 3200 Northline Ave., Suite 300, Greensboro, NC 27408, filed a supplement to NADA 139–472 for DENAGARD (tiamulin hydrogen fumarate) Type A medicated articles for use of a new product formulation in medicated swine feed. The supplemental NADA is approved as of January 6, 2012, and the regulations in 21 CFR 558.4 and 558.600 are amended to reflect the 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 558

Animal drugs, Animal feeds.

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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In paragraph (d) of § 558.4, in the ''Category II'' table, revise the entries for ''Tiamulin'' to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] Type A	Type B maximum (100x)	Assay limits percent [1] Type B/C [2]
* * * *	*	*	*
Tiamulin hydrogen fumarate	90–115	10 g/lb	90–115/70–130
* * * *	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limit, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

■ 3. In § 558.600, revise paragraph (a) and the heading of the first column in the table in paragraph (e)(1) to read as follows:

§ 558.600 Tiamulin.

(a) *Specifications.* Type A article containing 363.2 grams of tiamulin hydrogen fumarate per pound.

* * * * *

(e) * * *

(1) * * *

Tiamulin hydrogen fumarate in grams per ton	* * *	* * *	* * *	* * *
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Dated: April 17, 2012.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2012–9708 Filed 4–20–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–5181–F–02]

RIN 2506–AC22

State Community Development Block Grant Program: Administrative Rule Changes

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes changes to several sections of the regulations for the Community Development Block Grant (CDBG) program for states (State CDBG program). This final rule streamlines and updates the regulations to reflect statutory changes, clarifies the program income requirements, provides other clarifications to the State CDBG program regulations, and makes a conforming change to the regulations applicable to the CDBG Entitlement program. This final rule also provides additional flexibility to states in their administration of the program. The final rule follows publication of an October 17, 2008, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* May 23, 2012.

FOR FURTHER INFORMATION CONTACT: Eva C. Fontheim, Community Planning and Development Specialist, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7182, Washington, DC 20410; telephone number 202–708–1322 (this number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 2008, at 73 FR 61757, HUD published for public comment a proposed rule that would revise HUD's regulations for the State CDBG program in 24 CFR part 570, subpart I, in order to conform the regulations to current statutory requirements concerning program income, and to provide additional flexibility to states in implementing their programs. Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (HCDA) established the statutory framework for the CDBG program. The primary statutory objective of the CDBG program is to develop viable communities, by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low- and moderate-income. HUD's regulations implementing the CDBG program are located in 24 CFR part 570 (entitled ''Community Development Block Grants'').

Under the State CDBG program, states have the opportunity to administer CDBG funds for nonentitlement areas. Nonentitlement areas include those units of general local government that do not receive CDBG funds directly. States participating in the State CDBG program award grants only to units of general local government that carry out development activities. Annually, each state develops funding priorities and criteria for selecting projects. HUD's role under the State CDBG program is to ensure state compliance with federal laws, regulations, and policies. The regulations for the State CDBG program are codified in subpart I of the part 570 regulations.

The proposed regulatory amendments described in the October 17, 2008, proposed rule were designed to clarify how HUD will administer the State CDBG program. HUD proposed to streamline and update the regulations to reflect statutory changes, clarify the program income requirements, and provide other clarifications to the State CDBG regulations that will provide states with additional flexibility in their administration of the program. Interested readers should refer to the preamble to the October 17, 2008, proposed rule for additional information on the proposed regulatory changes to the State CDBG program.

II. This Final Rule; Changes to the October 17, 2008, Proposed Rule

This final rule follows publication of the October 17, 2008, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on December 16, 2008. HUD received eight responses. Commenters included one public interest group and seven units of local government. Most of the public comments pertained to the provisions of the proposed rule concerning program income requirements.

After careful consideration of the issues raised by the commenters, HUD has decided to adopt an amended version of the proposed rule. Specifically, HUD has made the following changes to the October 17, 2008, proposed rule:

1. *Administrative Expense Cap Time Period.* The final rule clarifies, at § 570.489(a)(1), that the program income included in the calculation determining the amount of allowable administrative and technical assistance per program year is all of the program income received in the program year, regardless of the fiscal year in which the state grant funds were appropriated that generated the program income.

2. *Identifies Parties in the Grant Agreement for Calculating Program Income.* Section 570.489(e)(2)(v) of the final rule specifies that the grant agreement referred to in this section is between the state and the unit of general local government.

3. *Entitlement Jurisdictions Receive Only an Incidental Benefit From State CDBG Program Expenditures.* The final rule, at § 570.486(c), no longer mandates

that entitlement jurisdictions receive only an incidental benefit from State CDBG program expenditures. Instead, if State CDBG program funds are expended on activities located in entitlement jurisdictions, the activities must significantly benefit residents of the state grant recipient, must meet the nonentitlement jurisdiction's needs, and the entitlement jurisdiction must make a meaningful contribution to the project.

4. *State Action Plans Including a Return of Program Income Requirement on Local Governments.* The final rule clarifies, at § 570.489(e)(3)(ii)(A), that states that intend to require units of general local government to return program income to the state, after the action plan is already submitted and approved by HUD, may submit a substantial amendment.

III. Discussion of Public Comments on the October 17, 2008, Proposed Rule

The following section presents a summary of the significant issues raised by the public comments in response to the October 17, 2008 proposed rule, and HUD's responses to those issues.

The summary of public comments is organized by category: section III.A. discusses the administrative cap, section III.B. discusses program-income requirements, section III.C. discusses spending funds outside a jurisdiction of the recipient, and section III.D. discusses audits.

A. Comments on the Administrative Expense Cap

Comments: Several commenters posed the following questions: ''What is the time period used to calculate the amount of program income received by the units of local government? Is it the amount received from the preceding year? The preceding 2 years? If the state is able to add additional program income to the current allocation to increase the administrative costs, where does the program income come from—the annual allocation to the state or the program income funds that come back to the local grantees?''

HUD Response. To determine the program income portion of the administrative expense cap, program income is counted in the program year that it is received by the unit of general local government, or by the unit of general local government's subgrantee. As noted above, HUD has revised § 570.489 to clarify that the program income included in the calculation determining the amount of allowable administrative and technical assistance per program year is all of the program income received in the program year, regardless of the fiscal year in which the state grant funds were appropriated that generated the program income. For example, if the state is determining the administrative cap for program year 2011, then the program income received by the unit of general local government in 2011 is used in the calculation. The program income that is used as part of the calculation to determine the administrative cap is the program income that is received by the unit of general local government during each program year regardless of which year's allocation of funds generated the program income. The administrative cap is based on the state's grant, program income, and reallocated funds received by the state in the program year. This sets the maximum State CDBG program funds that the state may expend on administration.

Comment: Increase the administrative cap. Two commenters suggested that HUD support an increase to the administrative cap.

HUD Response. The administrative cap is a statutory requirement. Accordingly, because the change requested by the commenters is outside HUD's authority, no change has been made to the proposed rule in response to those comments.

B. Comments on Program Income Requirements

Comment: The program income threshold should be raised from $35,000 to $50,000. Three commenters expressed appreciation that the program income threshold was increased from $25,000 to $35,000; however, they felt that by increasing it further to $50,000, the states would be further relieved of administrative requirements for program income.

HUD Response. HUD has not revised the proposed rule in response to these comments. As noted in the preamble to the proposed rule, HUD's proposal to increase the annual threshold to $35,000 was to account for inflation that occurred since the program income threshold was increased to $25,000 in 1995. As a result, any CDBG income below $35,000 would not be considered program income and would therefore not be subject to CDBG requirements, including tracking and reporting of program income. The higher amount requested by the commenters would exceed the adjustment required for inflation.

Comment: Concerning the Requirements That States Include the Use of Program Income Retained by Local Governments in Their Annual Performance and Evaluation Reports (PERs). Six commenters wrote that the changes to the program income requirements would create an administrative burden that would be duplicative of reports already submitted by states. One commenter questioned if the state would need to amend its PER if a unit of local government were late reporting its program income. Another commenter suggested that program income tracking should discontinue 5 years after closeout of the grant between the state and the unit of general local government to be consistent with the 5-year continued use requirements. Another commenter thought the language in the proposed rule was confusing regarding the ''proceeds from the sale of real property purchased or improved with CDBG funds, if the proceeds are received more than 5 years after the expiration of the grant agreement.'' The commenter suggested that the final rule should identify whether the grant agreement is between HUD and the state or the unit of general local government and the state.

HUD Response. HUD is responsible to taxpayers for ensuring that all CDBG program funds are spent in compliance with CDBG program requirements and regulations. In order to fulfill this responsibility, it is necessary that states report to HUD on all program income whether retained by units of general local government or paid to the state, to ensure that all program income is accounted for and is used for eligible activities. States, in turn, need to require that local governments report on program income. It is the state's responsibility to collect program income data from their units of general local government in a timely manner so that the data can be included in the annual PER. States should make findings against units of general local government that do not report program income in a timely manner. If a state receives program income data after the PER due date, the data must be included in the PER the following year with an explanation.

The requirement for states to track program income indefinitely is governed by section 104(j)(2) of the HCDA (42 U.S.C. 104(j)(2)), which mandates that program income is indefinite and subject to all the CDBG requirements even after the grant is closed out between the state and the unit of general local government. However, HUD recognizes the potential administrative burdens imposed on states by the reporting requirement and has made two modifications to the proposed rule in response to the suggestions raised by the commenters. First, the final rule revises § 570.489(e)(2)(v), by clarifying that proceeds received from the sale of real

property acquired or improved in whole or part with CDBG funds will not be considered program income if the proceeds are received more than 5 years after expiration of the grant agreement and are, therefore, exempt from being tracked. Further, HUD has adopted the suggestion to identify the parties to the grant agreement. The final rule specifies that the grant agreement is ''between the state and the unit of general local government.''

Comments: Concerning the Requirement To Add Program Income Data for Local Governments Into the Integrated Disbursement and Information System (IDIS). Six commenters wrote that the IDIS reporting requirement is an additional burden on the already heavy CDBG administrative workload. Another commenter suggested that the reporting requirements should be reduced to annually instead of quarterly. Two commenters requested additional time to phase in compliance because many local partners are small organizations that do not have the administrative capacity to comply immediately. One commenter wrote that it is burdensome to include loan receipts in both IDIS and the paper PER. One commenter requested that HUD be more specific about what data are to be collected and in what format.

HUD Response. HUD has not revised the proposed rule in response to these comments. HUD is cognizant of the potential administrative burdens that may be imposed by the reporting requirements and has attempted to craft a regulation that fulfills HUD's oversight responsibilities while minimizing such burdens. As an initial matter, HUD notes that the revised regulations recommend, but do not mandate quarterly reporting on IDIS. The final rule establishes an annual IDIS reporting requirement. HUD encourages states to enter IDIS data quarterly as a way to keep the data and reporting current and spread out the states' workload during the year. Quarterly entry of data would better enable both grantees and HUD to report accomplishments to community development stakeholders. Moreover, HUD also notes that the PER reporting is now automated in IDIS, making reporting less burdensome to states and more user-friendly. HUD has also provided guidance for reporting in the Notice: CPD–11–03, ''Reporting Requirements for the State Performance and Evaluation Report,'' which can be accessed at the following link: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/cpd.*

Comments: Regarding Program Income Retained at the Local Level. Two commenters objected to the provision of the proposed rule stating that if program income on hand exceeds projected cash needs for the reasonably near future, the state may require the local government to return all or part of the program income to the state until such time as the program income is needed by the local government. The commenters questioned why a state would want to require local governments to return program income to it until the local government is able to spend it. The commenters wrote that the proposed regulatory provision would create accounting difficulties for states and local governments, and risk the prospect of state accounts having insufficient funds when the local government is ready to spend its program income. The commenters advocated that the final rule provide greater flexibility to states in addressing program income.

HUD Response. With the exception of a clarifying change, HUD has not revised the proposed rule in response to these comments. HUD already provides the state with maximum feasible deference to decide whether to require a unit of general local government to return all or a portion of program income to the state in cases where the local government's program income exceeds projected cash needs for that same activity in the near future. A state that requires local governments to return program income in this instance must return the program income to the local government when it is needed to carry out the same activity from which it was derived. The advantage to the states utilizing this option is to keep the program income liquid and available to other local governments that are in need of immediate funding. Although HUD is leaving it up to the states to determine whether to allow units of general local government to retain their program income, states must have a method to ensure that funds are available to those units of general local government that are looking to receive their funds back to continue the same project activity. Further, each state is permitted to define ''continuing the same project activity.''

HUD also provides flexibility for states to choose whether to allow units of local government to retain the program income to implement another eligible CDBG activity under 24 CFR 570.489(e)(3)(ii)(A). If the state finds the unit of general local government is funding a different CDBG activity from which the program income was originally derived, the state may request that the locality return the program income entirely or when the income generated meets a specific threshold. States can employ one or more methods to ensure that local governments comply with applicable program income requirements. In addition, with HUD Field Office approval, the state can design its own method that will ensure compliance with the program income requirements by units of general local government. As noted, HUD has made a clarifying change to the following provision of the proposed rule. Proposed § 570.489(e)(3)(ii)(A) would have required states to indicate in their action plans their intent to require units of general local government to return program income. This final rule clarifies that a state may also indicate such intent in a substantial amendment to the plan in the event that the action plan has already been submitted and approved by HUD.

C. Comments on Spending Funds Outside the Jurisdiction of the Recipient

Comment: Definitions needed.

Two comments were made that the term ''significantly benefit,'' as used in the following phrase, ''State CDBG-funded activities must significantly benefit residents of the grant recipient's jurisdiction,'' needs to be defined. A definition for ''incidental benefit,'' as used in the sentence ''residents of Entitlement jurisdiction may not receive more than an incidental benefit from the state grantee's expenditure of funds,'' was also requested. Additionally, a comment was made that states should be given more flexibility to partner and share resources and solutions in a more regional approach that encourages smart growth and sustainable development.

HUD Response. Section 106(d)(1) of the HCDA (42 U.S.C. 106(d)(1)), allocates 30 percent of CDBG program funds to states for use in *nonentitlement areas.* The intent of this section of the HCDA is for the funds to *significantly* benefit nonentitlement areas. Allocation amounts for states are based on the demographics of each state's nonentitlement communities and are intended for use in nonentitlement areas. Entitlement grantees receive their own CDBG allocation based on the demographics of their jurisdictions. If it is more practical and feasible for an activity to be located within the boundaries of an entitlement community to benefit nonentitlement residents, the entitlement community is expected to provide a reasonable share of the CDBG program funds if the entitlement community benefits from the activity as well. An example would be locating a senior center in an entitlement city that is served by public transportation from outlying areas of the

city. HUD has decided not to define ''significant benefit'' at this time but will provide maximum feasible deference to each state's interpretation of this term.

HUD has taken into consideration the comment concerning the use of a more regional approach that would allow projects to benefit jurisdictions within nonentitlement and entitlement areas. HUD has modified the rule to be less restrictive, at the same time emphasizing that the funding must significantly benefit the state grantee's residents. Additionally, there have been more proposals recently that have involved funding projects in entitlement jurisdictions, and HUD has decided to modify the proposed rule in 24 CFR 570.486(c), to remove the requirement that entitlement jurisdictions receive only an incidental benefit from State CDBG program expenditures. State CDBG program funds still must be used to significantly benefit the residents of the unit of general local government receiving the grant and cannot be used to provide significant benefit to an entitlement jurisdiction unless the entitlement grantee provides a meaningful contribution to the project. The new regulatory requirement at 570.486(c) supersedes HUD's policy memo to all State CDBG program grantees on ''State CDBG Activities benefiting Entitlement Community Residents,'' dated May 26, 2006.

D. Comment on Audits

Comment: The commenter is concerned that states will be held responsible for guaranteeing their grantees' compliance with the Single Audit Act rather than ensuring that CDBG grants are awarded only to localities that can provide professional certification from an auditor that demonstrates compliance.

HUD Response. The rule revises 24 CFR 570.489(m), by including language that audits be conducted in accordance with 24 CFR 85.26(a), which incorporates compliance with the Single Audit Act and the provisions of the Office of Management and Budget (OMB) Circular A–133 (62 FR 35278). This is not an additional requirement of § 570.489(m), but an update to replace the citation to 24 CFR part 44 with section 85.26(a). It is a statutory requirement that states must comply with the requirements of the Single Audit Act and OMB Circular A–133; therefore, states are responsible to ensure that their funded localities are in compliance.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0085. 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.

Environmental Impact

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)), a Finding of No Significant Impact with respect to the environment was made at the proposed rule stage and remains applicable to this final rule. 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 Seventh 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.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose a federal mandate on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would revise certain requirements that apply to the management of CDBG funds, program income, and other administrative matters by state governments. The changes will not impose new economic burdens on states and local governments participating in the State CDBG program. Rather, as detailed in the preamble to this final rule, the regulatory amendments will codify existing HUD policy, update obsolete provisions, or revise regulations to reflect statutory language. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number for the State CDBG program is 14.228, and the CFDA program number for the Entitlement program is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development Block Grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 570, as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 5300–5320.

■ 2. In § 570.480, revise paragraph (a) and add paragraphs (f) and (g), to read as follows:

§ 570.480 General.

(a) This subpart describes policies and procedures applicable to states that have permanently elected to receive Community Development Block Grant (CDBG) funds for distribution to units of general local government in the state's nonentitlement areas under the Housing and Community Development Act of 1974, as amended (the Act). Other subparts of part 570 are not applicable to the State CDBG program, except as expressly provided otherwise. Regulations of part 570 outside of this subpart that apply to the State CDBG program include §§ 570.200(j) and 570.606.

* * * * *

(f) In administering the CDBG program, a state may impose additional or more restrictive provisions on units of general local government participating in the state's program, provided that such provisions are not inconsistent with the Act or other statutory or regulatory provisions that are applicable to the State CDBG program.

(g) States shall make CDBG program grants only to units of general local government. This restriction does not limit a state's authority to make payments to other parties for state administrative expenses and technical assistance activities authorized in section 106(d) of the Act.

■ 3. In § 570.486, revise paragraph (b) and add paragraph (c), to read as follows:

§ 570.486 Local Government requirements.

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(b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.* Any activity carried out by a recipient of State CDBG program funds must significantly benefit residents of the jurisdiction of the grant recipient, and the unit of general local government must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents.

(c) *Activities located in Entitlement jurisdictions.* Any activity carried out by a recipient of State CDBG program funds in entitlement jurisdictions must significantly benefit residents of the jurisdiction of the grant recipient, and the State CDBG recipient must determine that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act. For an activity to significantly benefit residents of the recipient jurisdiction, the CDBG funds expended by the unit of general local government must not be unreasonably disproportionate to the benefits to its residents. In addition, the grant cannot be used to provide a significant benefit to the entitlement jurisdiction unless the entitlement grantee provides a meaningful contribution to the project.

■ 4. Amend § 570.489 as follows:

■ a. Revise paragraphs (a)(1), (b), and (c);

■ b. Add paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B);

■ c. Revise paragraphs (e)(1), (e)(2), (e)(3)(i), and (e)(3)(ii);

■ d. Add paragraphs (e)(3)(iii), (e)(3)(iv), and (e)(4);

■ e. Revise the first sentence of paragraph (f)(2);

■ f. Revise paragraph (m); and

■ g. Add paragraph (n) to read as follows:

§ 570.489 Program administrative requirements.

(a) *Administrative and planning costs*—(1) *State administrative and technical assistance costs.* (i) The state is responsible for the administration of all CDBG funds. The state shall pay from its own resources all administrative expenses incurred by the state in carrying out its responsibilities under this subpart, except as provided in this paragraph (a)(1)(i) of this section, which is subject to the time limitations in paragraph (a)(1)(iv) of this section. To pay administrative expenses, the state may use CDBG funds not to exceed $100,000, plus 50 percent of administrative expenses incurred in excess of $100,000. Amounts of CDBG funds used to pay administrative expenses in excess of $100,000 shall not, subject to paragraph (a)(1)(iii) of this section, exceed 3 percent of the sum of the state's annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the state), and of funds reallocated by HUD to the state.

(ii) To pay the costs of providing technical assistance to local governments and nonprofit program recipients, a state may, subject to paragraph (a)(1)(iii) of this section, use CDBG funds received on or after January 23, 2004, in an amount not to exceed 3 percent of the sum of its annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds that generate the program income were appropriated (whether retained by units of general local government or paid to the state), and funds reallocated by HUD to the state during each program year.

(iii) The amount of CDBG funds used to pay the sum of administrative costs in excess of $100,000 paid pursuant to paragraph (a)(1)(i) of this section and technical assistance costs paid pursuant to paragraph (a)(1)(ii) of this section must not exceed 3 percent of the sum of a state's annual grant, program income received by units of general local government during each program year, regardless of the fiscal year in which the state grant funds generate the program income were appropriated (whether retained by the unit of general local government or paid to the state), and funds reallocated by HUD to the state.

(iv) In calculating the amount of CDBG funds that may be used to pay state administrative expenses prior to January 23, 2004, the state may include in the calculation the following elements only to the extent that they are within the following time limitations:

(A) $100,000 per annual grant beginning with FY 1984 allocations;

(B) Two percent of the sum of a state's annual grant and funds reallocated by HUD to the state within a program year, without limitation based on when such amounts were received;

(C) Two percent of program income returned by units of general local government to states after August 21, 1985; and

(D) Two percent of program income received and retained by units of general local government after February 11, 1991.

(v) In regard to its administrative costs, the state has the option of selecting its approach for demonstrating compliance with the requirements of this paragraph (a)(1) of this section. Any state whose matching cost contributions toward state administrative expense matching requirements are in arrears must bring matching cost contributions up to the level of CDBG funds expended for such costs. A state grant may not be closed out if the state's matching cost contribution is not at least equal to the amount of CDBG funds in excess of $100,000 expended for administration. Funds from any year's grant may be used to pay administrative costs associated with any other year's grant. The two approaches for demonstrating compliance with this paragraph (a)(1) of this section are:

(A) *Cumulative accounting of administrative costs incurred by the*

state since its assumption of the CDBG program. Under this approach, the state will identify, for each grant it has received, the CDBG funds eligible to be used for state administrative expenses, as well as the minimum amount of matching funds that the state is required to contribute. The amounts will then be aggregated for all grants received. The state must keep records demonstrating the actual amount of CDBG funds from each grant received that were used for state administrative expenses, as well as matching amounts that were contributed by the state. The state will be considered to be in compliance with the applicable requirements if the aggregate of the actual amounts of CDBG funds spent on state administrative expenses does not exceed the aggregate maximum allowable amount and if the aggregate amount of matching funds that the state has expended is equal to or greater than the aggregate amount of CDBG funds in excess of $100,000 (for each annual grant within the subject period) spent on administrative expenses during its 3- to 5-year Consolidated Planning period. If the state grant for any grant year within the 3- to 5-year period has been closed out, the aggregate amount of CDBG funds spent on state administrative expenses, the aggregate maximum allowable amount, the aggregate matching funds expended, and the aggregate amount of CDBG funds in excess of $100,000 (for each annual grant within the subject period) will be reduced by amounts attributable to the grant year for which the state grant has been closed out.

(B) *Year-to-year tracking and limitation on drawdown of funds.* For each grant year, the state will calculate the maximum allowable amount of CDBG funds that may be used for state administrative expenses, and will draw down amounts of those funds only upon its own expenditure of an equal or greater amount of matching funds from its own resources after the expenditure of the initial $100,000 for state administrative expenses. The state will be considered to be in compliance with the applicable requirements if the actual amount of CDBG funds spent on state administrative expenses does not exceed the maximum allowable amount, and if the amount of matching funds that the state has expended for that grant year is equal to or greater than the amount of CDBG funds in excess of $100,000 spent during that same grant year. Under this approach, the state must demonstrate that it has paid from its own funds at least 50 percent of its administrative expenses in excess of $100,000 by the end of each grant year.

* * * * *

(b) *Reimbursement of pre-agreement costs.* The state may permit, in accordance with such procedures as the state may establish, a unit of general local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the state and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this part and 24 CFR part 58. A state may incur costs prior to entering into a grant agreement with HUD and charge those pre-agreement costs to the grant, provided that the activities are eligible and are undertaken in accordance with the requirements of this part, part 58 of this title, and the citizen participation requirements of part 91 of this title.

(c) *Federal grant payments.* The state's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR part 205. The state must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the state to units of general local government. States must also have procedures in place, and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the state and disbursement for CDBG activities.

(d) * * *

(2) * * *

(iii) * * *

(A) A state that opts to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of part 85 must comply with the requirements therein.

(B) A state that opts to satisfy this requirement for fiscal controls and administrative procedures by applying the provisions of part 85 of this title must also ensure that recipients of the state's CDBG funds comply with part 84 of this title, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' as applicable.

(e) *Program income.* (1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, or a subgrantee of the unit of general local government that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out, except as provided in paragraph (e)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income must be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; or a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds, except as provided in paragraph (e)(2)(v) of this section;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or subgrantee of the unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property, owned by the unit of general local government or other entity carrying out a CDBG activity that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds, except as provided in paragraph (e)(2)(iii) of this section;

(vi) Proceeds from the sale of loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds, less reasonable legal and other costs incurred in the course of such sale that are not otherwise eligible costs under sections 105(a)(13) or 106(d)(3)(A) of the Act;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending disposition of the income;

(x) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not of low and moderate income, if the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(xi) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-

profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds, which does not exceed $35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its subgrantees (all funds received from revolving loan funds are considered program income, regardless of amount);

(ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(iii) Payments of principal and interest made by a subgrantee carrying out a CDBG activity for a unit of general local government, toward a loan from the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;

(iv) The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(A) Interest income from loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD to be not eligible under § 570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of § 570.483, or to fail substantially to meet any other requirement of this subpart or the Act;

(B) Interest income from deposits of amounts reimbursed to a state's CDBG program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and

(C) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to $100 per year for administrative expenses otherwise permitted to be paid with CDBG funds.

(v) Proceeds from the sale of real property purchased or improved with CDBG funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government.

(3) * * *

(i) *Program income paid to the state.* Except as described in paragraph (e)(3)(ii)(A) of this section, the state may require the unit of general local government that receives or will receive program income to return the program income to the state. Program income that is paid to the state is treated as additional CDBG funds subject to the requirements of this subpart. Except for program income retained and used by the state for administrative costs or technical assistance under paragraph (a) of this section, program income paid to the state must be distributed to units of general local government in accordance with the method of distribution in the action plan under § 91.320(k)(1)(i) of this title that is in effect at the time the program income is distributed. To the maximum extent feasible, the state must distribute program income before it makes additional withdrawals from the Department of the Treasury, except as provided in paragraph (f) of this section.

(ii) *Program income retained by a unit of general local government.* A state may permit a unit of general local government that receives or will receive program income to retain the program income. Alternatively, subject to the exception in paragraph (e)(3)(ii)(A) of this section, a state may require that the unit of general local government pay any such income to the state.

(A) A state must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which it was derived. A state will determine when an activity will be considered to be continued, and HUD will give maximum feasible deference to a state's determination, in accordance with § 570.480(c). In making such a determination, a state may consider whether the unit of general local government is or will be unable to comply with the requirements of paragraph (e)(3)(ii)(B) of this section or other requirements of this part, and the extent to which the program income is unlikely to be applied to continue the activity within the reasonably near future. When a state determines that the program income will be applied to continue the activity from which it was derived, but that the amount of program income held by the unit of general local government exceeds projected cash needs for the reasonably near future, the state may require the local government to return all or part of the program income to the state until such time as the program income is needed by the unit of general local government. When a state determines that a unit of local government is not likely to apply any significant amount of program income to continue the activity within a reasonable amount of time, or that it will not likely apply the program income in accordance with applicable requirements, the state may require the unit of general local government to return all of the program income to the state for disbursement to other units of local government. A state that intends to require units of general local government to return program income in accordance with this paragraph (e)(3)(ii)(A) of this section must describe its approach in the state's action plan required under § 91.320 of this title or in a substantial amendment if the state intends to implement this option after the action plan is submitted to and approved by HUD.

(B) Program income that is received and retained by the unit of general local government is treated as additional CDBG funds and is subject to all applicable requirements of this subpart, regardless of whether the activity that generated the program income has been closed out. If the grant that generated the program income is still open when the program income is generated, program income permitted to be retained will be considered part of the unit of general local government's grant that generated the program income. If the grant is closed, program income permitted to be retained will be considered to be part of the unit of general local government's most recently awarded open grant. If the unit of general local government has no open grants, the program income retained by the unit of general local government will be counted as part of the state's grant year in which the program income was generated. A state must employ one or more of the following methods to ensure that units of general local government comply with applicable program income requirements:

(*1*) Maintaining contractual relationships with units of general local government for the duration of the existence of the program income;

(*2*) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government obtain advance state approval of either a unit of general local government's plan for the use of program income, or of each use of program income by grant recipients via regularly occurring reports and requests for approval;

(*3*) Closing out the underlying activity, but requiring as a condition of closeout that the unit of general local government notify the state when new program income is received; or

(*4*) With prior HUD approval, other approaches that demonstrate that the state will ensure compliance with the requirements of this subpart by units of general local government.

(C) The state must require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the

requirements of this subpart before requesting additional funds from the state for activities, except as provided in paragraph (f) of this section.

(iii) *Transfer of program income to Entitlement program.* A unit of general local government that becomes eligible to be an Entitlement grantee may request the state's approval to transfer State CDBG grant-generated program income to the unit of general local government's Entitlement program. A state may approve the transfer, provided that the unit of general local government:

(A) Has officially elected to participate in the Entitlement grant program;

(B) Agrees to use such program income in accordance with Entitlement program requirements; and

(C) Has set up Integrated Disbursement Information System (IDIS) access and agrees to enter receipt of program income into IDIS.

(iv) *Transfer of program income of grantees losing Entitlement status.* Upon entry into the State CDBG program, a unit of general local government that has lost or relinquished its Entitlement status must, with respect to program income that a unit of general local government would otherwise be permitted to retain, either:

(A) Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or

(B) Retain the program income and transfer it to the State CDBG program, in which case the unit of general local government must comply with the state's rules for program income and the requirements of this paragraph (e).

(4) The state must report on the receipt and use of all program income (whether retained by units of general local government or paid to the state) in its annual performance and evaluation report.

(f) * * *

(2) The state may establish one or more state revolving funds to distribute grants to units of general local government throughout a state or a region of the state to carry out specific, identified activities. * * *

* * * * *

(m) *Audits.* Notwithstanding any other provision of this title, audits of a state and units of general local government shall be conducted in accordance with § 85.26 of this title, which implements the Single Audit Act (31 U.S.C. 7501–07) and incorporates OMB Circular A–133. States shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with OMB Circular A–133, if applicable.

(n) *Cost principles and prior approval.* (1) A state must ensure that costs incurred by the state and by its recipients are in conformance with the following cost principles, as applicable:

(i) ''Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87),'' which is codified at 2 CFR part 225;

(ii) ''Cost Principles for Non-Profit Organizations (OMB Circular A–122),'' which is codified at 2 CFR part 230; and

(iii) ''Cost Principles for Educational Institutions (OMB Circular A–21),'' which is codified at 2 CFR part 220.

(2) All cost items described in Appendix B of 2 CFR part 225 that require federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR part 225 and are otherwise eligible under this subpart I, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without the express approval of HUD or, if charged through a cost allocation plan, of the cognizant federal agency.

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

■ 5. Add § 570.490(a)(3) to read as follows:

§ 570.490 Recordkeeping requirements.

(a) * * *

(3) *Integrated Disbursement and Information System (IDIS).* The state shall make entries into IDIS in a form prescribed by HUD to accurately capture the state's accomplishment and funding data, including program income, for each program year. It is recommended that the state enter IDIS data on a quarterly basis and it is required to be entered annually.

* * * * *

■ 6. Add § 570.504(e) to read as follows:

§ 570.504 Program income.

* * * * *

(e)(1) *Transfer of program income to Entitlement program.* A unit of general local government that becomes eligible to be an Entitlement grantee may request the state's approval to transfer State CDBG grant-generated program income to the unit of general local government's Entitlement program. A state may approve the transfer, provided that the unit of general local government:

(i) Has officially elected to participate in the Entitlement grant program;

(ii) Agrees to use such program income in accordance with Entitlement program requirements; and

(iii) Has set up Integrated Disbursement and Information System (IDIS) access and agrees to enter receipt of program income into IDIS.

(2) *Transfer of program income of grantees losing Entitlement status.* Upon entry into the State CDBG program, a unit of general local government that has lost or relinquished its Entitlement status must, with respect to program income that a unit of general local government would otherwise be permitted to retain, either:

(i) Retain the program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income; or

(ii) Retain the program income and transfer it to the State CDBG program, in which case the unit of general local government must comply with the state's rules for program income and the requirements of § 570.489(e).

Dated: April 16, 2012.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–9693 Filed 4–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0311]

Drawbridge Operation Regulation; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across the Columbia River, mile 105.6, at Vancouver, WA. This deviation is necessary to accommodate maintenance of the train signaling system scheduled for April 30, 2012. This deviation allows the bridge to remain in the closed position for the duration of the maintenance activity.

DATES: This deviation is effective from 8 a.m. on April 30, 2012 through 8 p.m. April 30, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–

0311 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0311 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 the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: BNSF has requested that the BNSF Swing Bridge across the Columbia River remain closed to vessel traffic to facilitate maintenance of the train signaling system. BNSF will be ''cutting over'' the train signaling system to a new system on April 30, 2012. During this cut-over the swing span of the BNSF Railway Bridge across the Columbia River will be disabled and the bridge will not be able to be opened. The BNSF Bridge crosses the Columbia River, mile 105.6, and in accordance to NOAA Chart 18526 provides 39 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal operation the bridge opens on signal as required by 33 CFR 117.5. This deviation period is from 8 a.m. on April 30, 2012 through 8 p.m. April 30, 2012. The deviation allows the swing span of the BNSF Railway Bridge across the Columbia River, mile 105.6, to remain in the closed position and need not open for maritime traffic from 8 a.m. through 8 p.m. on April 30, 2012. The swing span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period. The bridge shall operate in accordance to 33 CFR 117.5 at all other times. Waterway usage on this stretch of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft including cabin cruisers and sailing vessels. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate.

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: April 9, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–9733 Filed 4–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0297]

Drawbridge Operation Regulation; Mile 359.4, Missouri River, Kansas City, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Harry S. Truman Railroad Drawbridge across the Missouri River, mile 359.4, at Kansas City, Missouri. The deviation is necessary to allow the replacement of eight wire rope lifting cables that operate the lift span. This deviation allows the bridge to remain in the closed position while the lift cables are replaced.

DATES: This deviation is effective from 10 p.m. on or about May 15, 2012 through 10 a.m. on May 18, 2012 and again from 10 p.m. on or about May 22, 2012 through 10 a.m. on May 25, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0297 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0297 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 Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard, telephone 314–269–2378, email *Eric.Washburn@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 Canadian Pacific Railway requested a temporary deviation for the Harry S. Truman Railroad Drawbridge, across the Missouri River, mile 359.4, at Kansas City, Missouri to remain in the closed-to-navigation position for two 60-hour individual closures while the eight wire rope lifting cables that operate the lift span are replaced. The closure period will start at 10 p.m. on or about May 15, 2012 through 10 a.m. on May 18, 2012 and again from 10 p.m. on or about May 22, 2012 through 10 a.m. on May 25, 2012.

Once the wire rope lifting cables are removed, the lift span will not be able to open, even for emergencies, until the replacement wire rope lifting cables are installed.

The Harry S. Truman Railroad Drawbridge currently operates in accordance with 33 CFR 117.687, which states the draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24 hours advance notice is given.

There are no alternate routes for vessels transiting this section of the Missouri River. The Harry S. Truman Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 51.3 feet above zero on W. B. gage at Kansas City, Missouri. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with the waterway users.

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: April 9, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–9732 Filed 4–20–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0213; FRL–9661–6]

Revision to the Hawaii State Implementation Plan, Minor New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Hawaii State Implementation Plan (SIP). These revisions would update and replace the minor new source review rules that EPA approved into the Hawaii SIP in 1983.

DATES: This rule is effective on June 22, 2012 without further notice, unless EPA receives adverse comments by May 23, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0213, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: r9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While EPA generally lists the documents in the docket in the index, some information may not be specifically listed as a line item in the index or may be publicly available only at the hard copy location (e.g., voluminous records, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. The hard copy materials constitute the docket.

FOR FURTHER INFORMATION CONTACT: Geoffrey Glass, EPA Region IX, (415) 972–3534, *glass.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the Hawaii Department of Health (HDOH).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
HDOH	11–60.1–3	General conditions for considering applications	11/14/03	12/14/11
HDOH	11–60.1–5	Permit conditions	11/14/03	12/14/11
HDOH	11–60.1–7	Transfer of permit	11/14/03	12/14/11
HDOH	11–60.1–12	Air quality models	11/14/03	12/14/11
HDOH	11–60.1–19	Penalties and remedies	11/14/03	12/14/11
HDOH	11–60.1–81	Definitions	11/14/03	12/14/11
HDOH	11–60.1–82	Applicability	11/14/03	12/14/11
HDOH	11–60.1–83	Initial covered source permit application	11/14/03	12/14/11
HDOH	11–60.1–84	Duty to supplement or correct permit applications	11/14/03	12/14/11
HDOH	11–60.1–91	Temporary covered source permits	11/14/03	12/14/11
HDOH	11–60.1–92	Covered source general permits	11/14/03	12/14/11
HDOH	11–60.1–93	Federally-enforceable permit terms and conditions	11/14/03	12/14/11
HDOH	11–60.1–99	Public participation	11/14/03	12/14/11
HDOH	11–60.1–103	Applications for minor modifications	11/14/03	12/14/11
HDOH	11–60.1–104	Applications for significant modifications	11/14/03	12/14/11

On January 27, 2012, EPA determined that the submittal for Hawaii Department of Health Chapter 60.1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. What rules are being removed from the SIP?

Table 2 lists rules that we had previously approved into the SIP with the date of adoption by HDOH and the date of publication in the **Federal Register**. These rules are superseded by the rules listed in Table 1.

TABLE 2—DELETED RULES

Local agency	Rule No.	Rule title	Adopted	Published
HDOH	11–60–02	Permit system, applicability	11/29/82	8/18/83
HDOH	11–60–03	Permit system, applications	11/29/82	8/18/83
HDOH	11–60–04	Permit system, conditions for considering applications	11/29/82	8/18/83
HDOH	11–60–05	Permit system, action on applications	11/29/82	8/18/83
HDOH	11–60–07	Permit system, cancellation of authority to construct	11/29/82	8/18/83
HDOH	11–60–08	Permit system, suspension or revocation of permit to operate	11/29/82	8/18/83
HDOH	11–60–09	Permit system, transfer of permit to operate	11/29/82	8/18/83
HDOH	11–60–11	Permit system, posting of permit to operate	11/29/82	8/18/83
HDOH	11–60–12	Permit system, fees	11/29/82	8/18/83
HDOH	11–60–13	Permit system, fee schedule for a permit to operate	11/29/82	8/18/83
HDOH	11–60–14	Permit system, period of permit	11/29/82	8/18/83
HDOH	11–60–37	Penalties & remedies	11/29/82	8/18/83

C. What is the purpose of the submitted rule revisions?

Section 110(a)(2)(C) of the Clean Air Act as amended in 1990 (CAA or the Act) requires States to include in their SIPs programs that regulate the construction and modification of stationary sources adequate to ensure that the national ambient air quality standards are achieved. The purpose of these revisions is to fulfill this requirement of the CAA as it applies to minor stationary sources and minor modifications made to major stationary sources.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(l)).

Specifically, EPA evaluates minor new source review programs included as a SIP submittal based on the criteria in subpart I of 40 CFR 51, excluding 40 CFR 51.165 and 50.166, which relate to review of new major sources and major modifications under part C or D of title I of the CAA.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations and meet the criteria in subpart I of 40 CFR part 51 sections 160–164. The technical support document has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 23, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 22, 2012. This will incorporate these rules into the federally enforceable SIP for Hawaii.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 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, New source review, Reporting and recordkeeping requirements.

Dated: March 20, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart M—Hawaii

■ 2. In § 52.620, the table in paragraph (c) is amended by:

■ a. Removing the following twelve entries under the category for Title 11, Chapter 60: 11–60–2, 11–60–3, 11–60–4, 11–60–5, 11–60–7, 11–60–8, 11–60–9, 11–60–11, 11–60–12, 11–60–13, 11–60–14, and 11–60–37.

■ b. Adding the following fifteen entries in numerical order under the category for Chapter 60.1: Sections 11–60.1–3, 11–60.1–5, 11–60.1–7, 11–60.1–12, 11–60.1–19, 11–60.1–81, 11–60.1–82, 11–60.1–83, 11–60.1–84, 11–60.1–91, 11–60.1–92, 11–60.1–93, 11–60.1–99, 11–60.1–103, and 11–60.1–104.

The additions read as follows:

§ 52.620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA Approval date	Explanation
* *	*	*	*	* *
Department of Health, Title 11, Chapter 60.1, Air Pollution Control.	Hawaii Administrative Rules.			
* *	*	*	*	* *
11–60.1–3	General conditions for considering applications.		04/23/2012 [*Insert page number where the document begins*].	Supersedes 11–60–04, 11–60–11, 11–60–13, 11–60–14.
* *	*	*	*	* *
11–60.1–5	Permit conditions		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–7	Transfer of permit		04/23/2012 [*Insert page number where the document begins*].	Supersedes 11–60–09.
* *	*	*	*	* *
11–60.1–12	Air quality models		04/23/2012 [*Insert page number where the document begins*].	New regulation.
* *	*	*	*	* *
11–60.1–19	Penalties and remedies		04/23/2012 [*Insert page number where the document begins*].	Supersedes 11–60–37.
* *	*	*	*	* *
11–60.1–81	Definitions		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–82	Applicability		04/23/2012 [*Insert page number where the document begins*].	Supersedes 11–60–02.

EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA Approval date	Explanation
11–60.1–83	Initial covered source permit application.		04/23/2012 [*Insert page number where the document begins*].	Supersedes 11–60–03, 11–60–05, 11–60–07, 11–60–08, 11–60–12.
11–60.1–84	Duty to supplement or correct permit applications.		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–91	Temporary covered source permits.		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–92	Covered source general permits.		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–93	Federally-enforceable permit terms and conditions.		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–99	Public participation		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–103	Applications for minor modifications.		04/23/2012 [*Insert page number where the document begins*].	New regulation.
11–60.1–104	Applications for significant modifications.		04/23/2012 [*Insert page number where the document begins*].	New regulation.

* * * * *

[FR Doc. 2012–9705 Filed 4–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120412408–2408–01]

RIN 0648–XA795

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Final 2012 Summer Flounder, Scup, and Black Sea Bass Specifications

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

ACTION: Final rule.

SUMMARY: NMFS is implementing final specifications, which consist of catch levels and management measures, for the 2012 summer flounder, scup, and black sea bass fisheries. The specifications are necessary to ensure the three species are not overfished or subject to overfishing in 2012. This final rule makes no changes to the interim specifications implemented on January 1, 2012, which were established using the best available scientific information.

DATES: Effective April 23, 2012, through December 31, 2012.

ADDRESSES: Copies of the 2012 specifications document, which includes an Environmental Assessment (EA), are available from Daniel S. Morris, Acting Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION: On December 30, 2011 (76 FR 82189), NMFS published interim specifications for the summer flounder, scup, and black sea bass fisheries, including commercial quotas, recreational harvest limits, and, as appropriate, commercial possession limits. These interim specifications were effective on January 1, 2012, through December 31, 2012. The background and rationale supporting the interim specifications can be found in the preamble to the interim final rule cited above and are not repeated here.

As discussed in the interim final rule cited above, on December 14, 2011, the Mid-Atlantic Fishery Management Council (Council), and its Scientific and Statistical Committee (SSC), met to reconsider new stock assessment information on scup and summer flounder and to develop revised recommendations to NMFS for the 2012 specifications. The Council's revised recommendations are consistent with the measures implemented by NMFS in the interim final rule, so no changes to the interim specifications are necessary to address the Council's action.

As part of the interim final rule, NMFS solicited comment on the interim measures and acknowledged that it may adjust, as needed, the final 2012 specifications based on the Council's recommendations and public comment on the interim measures. During the 30-day comment period on the interim final rule, NMFS received three comments. These comments are addressed later in this final rule, but none warrant any changes to the interim specifications. Therefore, this final rule makes no changes to the measures implemented on January 1, 2012, for the 2012 fishing year, which remain as follows:

Summer Flounder

The updated stock assessment overfishing limit (OFL) is 31,588,000 lb (14,328 mt). The projected 2012 spawning stock biomass (SSB) is 134,667,008 lb (61,084 mt), above the SSB_{MSY} (where MSY means maximum sustainable yield) level of 132,440,000 lb (60,074 mt). Thus, the B/B_{MSY} ratio is 1.01. Applying the Council's risk policy results in an overfishing risk tolerance (P*) of 0.40, or a 40-percent risk of overfishing the summer flounder stock. Using this information, the resulting acceptable biological catch (ABC) remains 25,581,054 lb (11,603 mt),

Consistent with § 648.102(a), for summer flounder, the sum of the

recreational and commercial sector annual catch limits (ACLs) is equal to ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish). To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABC by the allocation percentages to derive the sector ACLs. This means that the derived ACLs are not split exactly at 60/40; however, the landing portions of the ACLs do preserve the 60/40 allocation split, consistent with the FMP. As a result of this apportionment, the commercial ACL remains 14,002,000 lb (6,351 mt) and the recreational ACL remains 11,579,000 lb (5,252 mt).

After deducting sector specific discards from the ACLs (459,000 lb (208 mt) for the commercial fishery, and 2,550,000 lb (1,157 mt) for the recreational fishery), and deducting the approved research set-aside of 677,128 lb (307 mt), the resulting commercial quota remains 12,729,724 lb (5,774 mt), and the recreational harvest limit remains 8,487,149 lb (3,850 mt).

Table 1 presents the final allocations of summer flounder by state. Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January-October 2011, plus any previously unaccounted for overages from January-December 2010. The interim final rule accounted for overages in NY and DE, and no new information is incorporated here; therefore, the overages presented below in Table 1 are the same as those in the interim final rule. The final allocations presented in this final rule would be exactly the same as in the interim final rule except that two states, NC and VA, requested two transfers of commercial quota in the intervening months since the interim final rule was published. To account for these transfers, Table 1 also indicates the total amounts of commercial quota transferred to date between NC and VA.[1]

Table 1 indicates that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2012. As a result, there is no quota available for 2012 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits remain prohibited for the 2012 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2012 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

TABLE 1—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2012

State	FMP Percent share	Initial quota, less RSA		2011 Quota overages (through 10/31/11)		2012 Quota transfers (through 4/3/12)		2011 Final quotas, accounting for RSA, overages, and transfers to date	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	6,054	2,746	0	0	0	0	6,054	2,746
NH	0.00046	59	27	0	0	0	0	59	27
MA	6.82046	868,226	393,827	0	0	0	0	868,226	393,827
RI	15.68298	1,996,400	905,567	0	0	0	0	1,996,400	905,567
CT	2.25708	287,320	130,328	0	0	0	0	287,320	130,328
NY	7.64699	973,441	441,553	50,736	23,014	0	0	922,705	418,539
NJ	16.72499	2,129,045	965,735	0	0	0	0	2,129,045	965,735
DE	0.01779	2,265	1,027	54,982	24,940	0	0	−52,717	−23,913
MD	2.03910	259,572	117,742	0	0	0	0	259,572	117,742
VA	21.31676	2,713,565	1,230,873	0	0	1,710,359	775,806	4,423,924	2,006,658
NC	27.44584	3,493,779	1,584,778	0	0	−1,710,359	−775,806	1,783,420	808,946
Total	100.00	12,729,724	5,774,203	105,718	47,954	N/A	N/A	12,676,724	5,750,162

Notes: 2011 quota overage is determined through comparison of landings for January through October 2011, plus any landings in 2010 in excess of the 2010 quota (that were not previously addressed in the 2011 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all states with an allocation. A state with a negative number has a 2012 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Scup

The OFL for scup, as revised by the October assessment update, is 50.48 million lb (22,897 mt). The ABC calculated from the revised OFL using the SSC's Level 3 control rule and applying the Council's risk policy (P* = 0.4) is 40,879,639 lb (18,543 mt). The scup management measures at § 648.120(a) specify that ABC is equal to the sum of the commercial and recreational sector ACLs. Using the derivation methods specified by the Council, with the ABC based on the revised OFL, the commercial sector ACL/ACT is 31,887,000 lb (14,464 mt), and the recreational sector ACL/ACT is 8,994,000 lb (4,079 mt). After an RSA of 571,058 lb (259 mt) is removed, the commercial quota remains 27,908,575 lb (12,659 mt), and the recreational harvest limit remains 8,446,367 lb (3,831 mt).

The scup commercial quota is divided into three commercial fishery quota periods. There were no previous commercial overages applicable to the 2012 scup commercial quota. The period quotas, after deducting for RSA remain: Winter I (January–April)—45.11 percent, or 12.59 million lb (5,711 mt); Summer (May–October)—38.95 percent, 10.87 million lb (4,931 mt); and Winter II (November–December)—15.94 percent, 4.45 million lb (2,018 mt). Unused Winter I quota is carried over for use in the Winter II period.

[1] For more information on the commercial quota transfers noted here, please see the following **Federal Register** documents: 77 FR 14481 (March 12, 2012); and 77 FR 19951 (April 3, 2012).

Consistent with the recommendation of the Council, the Winter I possession limit remains 50,000 lb (22,680 kg) per trip.

TABLE 2—FINAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2012 BY QUOTA PERIOD

Quota period	Percent share	Commercial annual catch limit		Estimated discards		Initial quota		Initial quota less overages (through 10/31/2009)		Adjusted quota less overages and RSA		Federal possession limits (per trip)	
		lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	14,384,226	6,525	1,593,736	723	12,790,489	5,802	N/A	N/A	12,589,558	5,711	50,000	22,680
Summer	38.95	12,419,987	5,634	1,376,104	624	11,043,883	5,009	N/A	N/A	10,870,390	4,931	N/A	N/A
Winter II	15.94	5,082,788	2,306	563,160	255	4,519,628	2,050	N/A	N/A	4,448,627	2,018	2,000	907
Total	100.0	31,887,000	14,464	3,533,000	1,603	28,354,000	12,861	N/A	N/A	27,908,575	12,659	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the **Federal Register**.
Metric tons are as converted from pounds and may not necessarily add due to rounding.
N/A = Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.122(d), this rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 3. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 3—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

This final rule maintains the Council's recommended measures for black sea bass: An ABC of 4.5 million lb (2,041 mt); a commercial ACL and ACT of 1,980,000 lb (898 mt); a recreational ACL of 2,520,000 lb (1,143 mt); and a recreational ACT of 1,860,000 lb (844 mt) to mitigate the potential that the recreational sector ACL will be exceeded in 2012. Removing discards from the ACTs produces the total landings allowed from the 2012 black sea bass fishery. When the RSA of 92,600 lb (42 mt) is removed, the remaining available landings remain as a recreational harvest limit of 1.32 million lb (598 mt) and a commercial quota of 1.71 million lb (774 mt).

Comments and Responses

As noted above, during the 30-day comment period on the interim final rule, NMFS received comment letters from three entities.

Comment 1: The Connecticut Department of Environmental Protection (CT DEP) raised concern about the 2012 scup catch levels; specifically, that such a high commercial catch level, paired with high possession limits, could flood the commercial scup market, resulting in low value for the fish. CT DEP suggested that recruitment may decline in the coming years and this would necessitate a reduction in catch that could also destabilize the fishery and its markets. CT DEP also raised concerns about how commercial discards are quantified and used in stock assessments, as well as concerns about the allocation split between the commercial and recreational fisheries.

Response: Although there may be some validity to the concerns raised by CT DEP regarding high commercial catch levels and possession limits causing the value for scup to decline, as well as a potential future decline in recruitment, these concerns are too speculative for NMFS to alter the 2012 specifications for scup, which remain consistent with the best scientific information available, are well within the catch limits recommended by the Council's Scientific and Statistical Committee (SSC), and are consistent with the recommendations of both the Council and the Atlantic States Marine Fisheries Commission (Commission). In response to the concern regarding the stock assessment, NMFS points out that the stock assessment information was vetted through the Council's SSC, which determined the information was sufficiently reliable to establish the catch limits from which the specifications are derived. Lastly, as to the concern regarding the allocation between the commercial and recreational fisheries, this is an issue that would need to be addressed by the Council and Commission in an amendment to the Summer Flounder, Scup, and Black Sea Bass FMP and is outside the scope of the process of setting annual specifications.

Comment 2: One comment was received from a recreational fisherman who advocated for reallocation of fish from the commercial to the recreational fishery, particularly because the number of commercial operators has declined in the commenter's home state of Virginia.

Response: As noted above, the issue of allocations between the commercial and recreational fisheries would need to

be addressed by the Council and Commission in an amendment to the FMP. NMFS has no authority to alter the allocation as part of the annual specifications process.

Comment 3: The Rhode Island Division of Fish and Wildlife (RI DFW) provided extensive comment on the challenges state agencies face in administering permits for and tracking landings associated with the research set-aside (RSA) program. The RI DFW recommends that RSA landings be included as a landing disposition code in the Northeast Standard Atlantic Fisheries Information System (SAFIS) dealer landing reporting system for improved landing tracking. Several additional suggestions for improving the permit issuance, monitoring, and compliance monitoring of the RSA program were also provided.

Response: NMFS recognizes that improvements can always be made in the administration of the RSA program, and NMFS also recognizes that the states may face unique challenges with this program; however, the Council and Commission continue to value the RSA program as an important mechanism to facilitate research on Council trust resources. NMFS will explore changes to the SAFIS system as RI DFW suggest, but acknowledge at the outset that such a change is unlikely to completely capture the information as RI DFW expects due to the fact that seafood dealers (who use SAFIS to report purchases) often do not know whether landings by a fishing vessel were RSA landings or not and so could not be expected to accurately code such landings as RSA. Because none of these comments are specifically germane to the annual specifications, no changes to the 2012 measures will be made.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date as such a delay is unnecessary. This final rule makes no changes to the interim specifications implemented on January 1, 2012, so any delay in effectiveness of this final rule has no effect on the management measures to which the participants in the summer flounder, scup, and/or black sea bass commercial and/or recreational fisheries are currently subject.

These final specifications are exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

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

Dated: April 17, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–9755 Filed 4–20–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC001

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 19, 2012, through 1200 hrs, A.l.t., July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 300 metric tons as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012), for the period 1200 hrs, A.l.t., April 1, 2012, through 1200 hrs, A.l.t., July 1, 2012.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 17, 2012.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 18, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–9714 Filed 4–18–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 78
Monday, April 23, 2012

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0287; Airspace Docket No. 11–AWP–21]

RIN 2120–AA66

Proposed Amendment of Air Traffic Service Routes; Southwestern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Jet Route J–2, and VOR Federal airways V–16, V–66, and V–202 in southern Arizona and New Mexico. The FAA is proposing this action due to the scheduled decommissioning of the Cochise, AZ, VHF omnirange tactical air navigation aid (VORTAC) which currently forms segments of the routes. This would enhance enroute navigation within the National Airspace System.

DATES: Comments must be received on or before June 7, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–0287 and Airspace Docket No. 11–AWP–21 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

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–2012–0287 and Airspace Docket No. 11–AWP–21) and be submitted in triplicate to the Docket Management Facility (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–2012–0287 and Airspace Docket No. 11–AWP–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date 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 comment closing date. 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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Ave. 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 to modify Jet Route J–2, and VOR Federal airways V–16, V–66, and V–202. This action is necessary due to the decommissioning of the Cochise, AZ, VORTAC scheduled in the Fall of 2012. The proposed changes would provide for the continuity of affected routes.

Specifically, the portion of J–2 that currently extends from Gila Bend, AZ; to Cochise, AZ; to El Paso, TX, would be realigned to proceed from Gila Bend to Tucson, AZ, and then to El Paso, TX (the remainder of the route would be unchanged).

The portion of V–16 that currently extends from Tucson, AZ; to Cochise, AZ; to Columbus, NM, would be realigned to proceed from Tucson, AZ; to San Simon, AZ; then to Columbus, NM (remainder of route unchanged).

The routing of V–66 would be amended only by removal of exclusionary language in the legal description that reads ''excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.'' The exclusion was originally in place due to special use airspace (SUA) in the vicinity of the route. Air Traffic Control (ATC) has determined that the exclusion is no longer required to accommodate the SUA activity. Eliminating the exclusion would allow ATC to use V–66 above 13,000 feet MSL as needed. This would provide greater flexibility for ATC and more efficient use of airspace.

V–202 currently extends from Tucson, AZ; to Cochise, AZ; to San Simon, AZ;

to Silver City, NM; to Truth or Consequences, NM. The western portion of V–202 that extends between Tucson-Cochise-San Simon would be deleted. The modified V–202 would begin at San Simon, AZ; to Silver City, NM; to Truth or Consequences, NM. In a separate action, the FAA is proposing to establish RNAV route T–310 that would extend between Tucson, AZ, and Truth or Consequences, NM. The route would overlie the track of the deleted section of V–202 providing an alternate means of navigation along that route segment.

Radials in the route descriptions below are stated in True degrees, except for the proposed revised airway segments, which include both True and Magnetic values. In a final rule, only True degrees would be stated.

Jet routes are published in paragraph 2004, and VOR Federal airways are published in paragraph 6010, 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 jet route and VOR Federal airways listed in this document would be subsequently published in the Order.

The FAA has determined that 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 Department of Transportation (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 that this proposed 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 United States Code. 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.

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 modifies the route structure as required to preserve the safe and efficient flow of air traffic.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, 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 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 FAA Order 7400.9V, Airspace Designations and Reporting Points, Dated August 9, 2011 and effective September 15, 2011, is amended as follows:

Paragraph 2004 Jet routes.

* * * * *

J–2 [Amended]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Tucson, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.

* * * * *

Paragraph 6010 Domestic VOR federal airways.

V–16 [Amended]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; San Simon, AZ; INT San Simon 119°(T)/106°(M) and Columbus, NM, 277°(T)/265°(M) radials; Columbus; El Paso, TX; Salt Flat, TX; Wink, TX; INT Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Pine Bluff, AR; Marvell, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–66 [Amended]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Crimson, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA.

V–202 [Amended]

From San Simon, AZ; Silver City, NM; to Truth or Consequences, NM.

Issued in Washington, DC, on April 16, 2012.

Gary A. Norek,

Manager, Airspace, Regulations & ATC Procedures Group.

[FR Doc. 2012–9675 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0286; Airspace Docket No. 11–AWP–22]

RIN 2120–AA66

Proposed Establishment of Area Navigation (RNAV) Routes; Southwestern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish two new low-altitude RNAV routes, designated T–306 and T–310, in southwestern United States. The new routes would expand the availability of RNAV within the National Airspace System (NAS) and provide substitute

route segments for portions of VOR Federal airways V–16 and V–202.

DATES: Comments must be received on or before June 7, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2012–0286 and Airspace Docket No. 11–AWP–22 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

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–2012–0286 and Airspace Docket No. 11–AWP–22) and be submitted in triplicate to the Docket Management Facility (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–2012–0286 and Airspace Docket No. 11–AWP–22.'' 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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Ave. 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 to establish two new low altitude RNAV routes in southwestern United States. Route T–306 would extend between Los Angeles, CA, and El Paso, TX; and route T–310 would extend between Tucson, AZ, and Truth or Consequences, NM. The routes would expand the availability of RNAV within the NAS and provide substitute route segments for portions of VOR Federal airways V–16 and V–202 that will be affected by the scheduled decommissioning of the Cochise, NM, VORTAC in the Fall of 2012.

This action would enhance en route navigation for users, increase the efficiency of the NAS and expand the use of RNAV within the NAS.

RNAV routes are published in paragraph 6011 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 RNAV routes listed in this document would be subsequently published in the Order.

The FAA has determined that 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 Department of Transportation (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 that this proposed 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 United States Code. 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.

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 modifies the route structure as required to preserve the safe and efficient flow of air traffic.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, 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 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 FAA Order 7400.9V, Airspace Designations and Reporting Points, Dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6011 United States area navigation routes

T–306, Los Angeles, CA (LAX) to El Paso, TX (ELP) [New]

Los Angeles, CA (LAX)	VORTAC	(Lat. 33°55′59″ N., long. 118°25′55″ W.)
PRADO, CA	INT	(Lat. 33°55′23″ N., long. 117°47′02″ W.)
Paradise, CA (PDZ)	VORTAC	(Lat. 33°55′06″ N., long. 117°31′48″ W.)
SETER, CA	INT	(Lat. 33°54′04″ N., long. 117°06′33″ W.)
BANDS, CA	INT	(Lat. 33°53′23″ N., long. 116°50′58″ W.)
Palm Springs, CA (PSP)	VORTAC	(Lat. 33°52′12″ N., long. 116°25′47″ W.)
Blythe, CA (BLH)	VORTAC	(Lat. 33°35′46″ N., long. 114°45′41″ W.)
Buckeye, AZ (BXK)	VORTAC	(Lat. 33°27′12″ N., long. 112°49′29″ W.)
PERKY, AZ	INT	(Lat. 33°26′45″ N., long. 112°28′23″ W.)
Phoenix, AZ (PXR)	VORTAC	(Lat. 33°25′59″ N., long. 111°58′13″ W.)
TOTEC, AZ	INT	(Lat. 32°49′36″ N., long. 111°38′32″ W.)
Tucson, AZ (TUS)	VORTAC	(Lat. 32°05′43″ N., long. 110°54′53″ W.)
NOCHI, AZ	WP	(Lat. 32°02′00″ N., long. 109°45′30″ W.)
ANIMA, AZ	INT	(Lat. 31°54′58″ N., long. 108°30′51″ W.)
DARCE, NM	INT	(Lat. 31°53′12″ N., long. 108°13′21″ W.)
Columbus, NM (CUS)	VOR/DME	(Lat. 31°49′09″ N., long. 107°34′28″ W.)
El Paso, TX (ELP)	VORTAC	(Lat. 31°48′57″ N., long. 106°16′55″ W.)

T–310, Tucson, AZ (TUS) to Truth or Consequences, NM (TCS) [New]

Tucson, AZ (TUS)	VORTAC	(Lat. 32°05′43″ N., long. 110°54′53″ W.)
SULLI, AZ	INT	(Lat. 31°56′04″ N., long. 110°34′16″ W.)
MESCA, AZ	INT	(Lat. 31°53′38″ N., long. 110°29′08″ W.)
NOCHI, AZ (new)	WP	(Lat. 31°59′58″ N., long. 108°30′51″ W.)
San Simon, AZ (SSO)	VORTAC	(Lat. 32°16′09″ N., long. 109°15′47″ W.)
Silver City, NM (SVC)	VORTAC	(Lat. 32°38′16″ N., long. 108°09′40″ W.)
Truth or Consequences, NM (TCS)	VORTAC	(Lat. 33°16′57″ N., long. 107°16′50″ W.)

Issued in Washington, DC, on April 16, 2012.

Gary A. Norek,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–9673 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0310; Airspace Docket No. 12–ANM–6]

Proposed Modification of Class E Airspace; Plentywood, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Plentywood Sher-Wood Airport, Plentywood, MT. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Plentywood Sher-Wood Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before June 7, 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–2012–0310; Airspace Docket No. 12–ANM–6, 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 2012–0310 and Airspace Docket No. 12–ANM–6) 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–2012–0310 and Airspace Docket No. 12–ANM–6''. 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 airspace extending upward from 700 feet above the surface at Plentywood Sher-Wood Airport, Plentywood, MT. Controlled airspace is necessary to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Plentywood Sher-Wood Airport, Plentywood, MT, and would enhance the safety and management of aircraft operations at the airport.

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 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 Plentywood Sher-Wood Airport, Plentywood, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

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

* * * * *

ANM MT E5 Plentywood, MT [Modified]

Plentywood Sher-Wood Airport, MT
(Lat. 48°47′19″ N., long. 104°31′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Plentywood Sher-Wood Airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 49°00′00″ N., long. 105°02′00″ W.; to lat. 49°00′00″ N., long. 104°02′00″ W.; to lat. 48°32′35″ N., long. 104°02′00″ W.; to lat. 48°27′00″ N., long. 104°11′12″ W.; to lat. 48°26′00″ N., long. 104°41′00″ W.; to lat. 48°17′00″ N., long. 104°43′00″ W.; to lat. 48°17′00″ N., long. 105°52′00″ W.; to lat. 48°32′00″ N., long. 105°51′00'' W.; thence to the point of origin.

Dated: Issued in Seattle, Washington, on April 10, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–9671 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0213; FRL–9661–7]

Revisions to the Hawaii State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Hawaii State Implementation Plan (SIP). These revisions would update and replace the minor new source review rules that EPA approved into the Hawaii SIP in 1983.

DATES: Any comments on this proposal must arrive by *May 23, 2012.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0213, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: rios.gerardo@epa.gov.*
3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information

provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Geoffrey Glass, EPA Region IX, (415) 972–3534, *glass.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: Hawaii State Department of Health Rules 11–60.1–3, 11–60.1–5, 11–60.1–7, 11–60.1–12, 11–60.1–19, 11–60.1–81, 11–60.1–82, 11–60.1–83, 11–60.1–84, 11–60.1–91, 11–60.1–92, 11–60.1–93, 11–60.1–99, 11–60.1–103, and 11–60.1–104. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 20, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–9704 Filed 4–20–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BC09

Atlantic Highly Migratory Species; Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

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

ACTION: Notice of intent (NOI) to hold public scoping meetings and to prepare a draft environmental impact statement (EIS); request for comments.

SUMMARY: NMFS announces its intent to hold public scoping meetings to determine the scope and significance of issues to be analyzed in a draft environmental impact statement (EIS) on management measures for Atlantic bluefin tuna (BFT) and a potential proposed amendment to the 2006 Consolidated HMS FMP based on that process. The public process will help NMFS determine if existing measures are the best means of achieving certain management objectives for Atlantic BFT and providing flexibility for future management, consistent with the Consolidated HMS FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws. NMFS is also announcing the availability of a scoping document describing measures for potential inclusion in a proposed Amendment. Table 1, below, under **SUPPLEMENTARY INFORMATION**, provides details for seven scoping meetings to discuss and collect comments on the scoping document and certain management objectives for BFT. NMFS is requesting comments on this NOI, and the management of BFT, including, but not limited to, those described in the scoping document.

DATES: Written comments on this NOI and the scoping document must be received on or before July 15, 2012.

ADDRESSES: Scoping meetings will be held at the locations listed below in Table 1 in **SUPPLEMENTARY INFORMATION**. You may submit comments, identified by ''NOAA–NMFS–2012–0082'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2012–0082'' 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.
- *Fax:* 978–281–9340, Attn: Tom Warren.
- *Mail:* Tom Warren, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 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, or 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 to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. To be considered, electronic comments must be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.* Do not submit electronic comments to individual NMFS staff.

The scoping document is available by sending your request to Tom Warren at the mailing address specified above, or by calling the phone number indicated below. The scoping document or the Consolidated HMS FMP also may be

downloaded from the HMS Web site at *www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Tom Warren or Brad McHale, 978–281–9260, or online at *http://www.nmfs.noaa.gov/sfa/hms/.*

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS, including BFT, are managed under the dual authority of the Magnuson-Stevens Act and ATCA. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635. Copies of the Consolidated HMS FMP are available upon request. The 1999 FMP allocated the annual U.S. BFT quota recommended by ICCAT to BFT fishing categories based on landings from 1983–1991. Landings were the only portion of catch (i.e., ''catch'' includes both landings and dead discards) that were factored into the 1999 FMP percentage allocation analysis for the various BFT fisheries at that time, as dead discards were accounted for under a separate ICCAT allocation. The fishing category percentage allocations continued unchanged in the 2006 Consolidated HMS FMP. The ICCAT provision for a separate dead discard allowance has since been eliminated, and dead discards must now be accounted for within annual quota allocations, along with landings. Furthermore, pursuant to ICCAT Recommendation 10–03, the amount of underharvest that is allowed to be carried forward from one year to the next recently has decreased. During the 2011 BFT quota and Atlantic tuna management measures rulemaking (2011 Quota Rule)(March 14, 2011; 76 FR 13583) process, the adjusted quota for 2011 was insufficient to account for anticipated 2011 dead discards up front, while also providing base allocations for the categories per the percentages outlined in the Consolidated HMS FMP. The proposed 2012 specifications rule (77 FR 15712; March 16, 2012) anticipates a similar situation for the 2012 fishing year.

The range of comments received on the 2011 Quota Rule and during recent HMS Advisory Panel (AP) meetings has demonstrated the need for a comprehensive review of BFT management measures. Many comments raised issues that were outside of the scope of that rulemaking and would require more significant analyses because of the potential impacts on the environment, fisheries, and fishery participants. Some of the issues raised include, but are not limited to: Holding each quota category accountable for dead discards; changing domestic allocations among fishing categories; reducing BFT bycatch; modifying the permit structure for the fisheries; improved monitoring of catch in all BFT fisheries; providing incentives to the Longline category to reduce interactions with BFT; and reducing dead discards in the pelagic longline (PLL) fishery.

Management Options and Request for Comments

NMFS requests comments on management options, including, but not limited to, the following: Deduction of estimated dead discards from quotas at the beginning of the fishing year for all permit categories; revision of baseline quota allocations; methods to improve reporting and monitoring of dead discards and landings in all categories; elimination of target catch requirements for Longline category (pelagic); reduction of minimum BFT size restrictions; modification of BFT retention tolerances for Purse seine and Harpoon categories; specification of maximum catch limit for Angling category; mandatory retention of BFT in the Longline category; regional or individual BFT catch caps for the Longline category; modification to existing pelagic longline gear closed areas; creation of new pelagic longline gear closed area(s); modifications to sub-quota rules (e.g., how the General or Angling category subquota is divided up among seasons or areas); establishment of an annual quota and rollover provisions for Northern albacore tuna; and other administrative measures (such as regulations about permit issuance). NMFS also requests comment on any other fishery management issue pertaining to BFT fisheries, which the public believes should be further examined by NMFS. These comments will be used to assist in the development of a proposed Amendment 7. The types of management measures under consideration for Amendment 7 will include those described in the scoping document, as well as alternative measures that may be suggested during the scoping process.

Scoping Process

It is NMFS's intent to encourage all persons affected by or otherwise interested in the management of BFT or other HMS species to participate in the process to determine the scope and significance of issues to be analyzed in the draft EIS and Amendment 7. All such persons are encouraged to submit written comments (see **ADDRESSES**) or comment at one of the scoping meetings. Persons submitting comments may wish to address the specific measures in the scoping document.

NMFS intends to hold scoping meetings in the geographic areas that may be affected by these measures, including locations on the Atlantic and Gulf of Mexico coasts, and will consult with the Atlantic regional fishery management councils (Table 1). After scoping has been completed and public comment gathered and analyzed, NMFS will proceed with preparation of a draft EIS and proposed rule, which will include additional opportunities for public comment. The scope of the draft EIS will consist of the range of actions, alternatives, and impacts to be considered. Alternatives may include, but are not limited to, the following: not amending the Consolidated HMS FMP (taking no action); developing an amendment that contains management measure such as those described in this notice and in the scoping document; or other reasonable courses of action. Impacts may be direct, indirect, or cumulative. NMFS expects to present relevant draft documents at the fall 2012 HMS AP meeting.

TABLE 1—DATES, TIMES AND LOCATIONS OF THE SCOPING MEETINGS

Date	Time	Meeting locations	Address
May 8, 2012	6:15–8:45 p.m.	Toms River Library (Mancini Hall), Toms River, NJ	101 Washington Street, Toms River, NJ 08753.
May 16, 2012	6:00–9:00 p.m.	National Marine Fisheries Service, Northeast Regional Office, Gloucester, MA.	55 Great Republic Drive, Gloucester, MA 01930.
May 21, 2012	6:00–9:00 p.m.	Plaquemines Parish Government Community Center, (Belle Chasse Auditorium), Belle Chasse, LA.	8398 Hwy 23, Belle Chasse, LA 70037.
May 23, 2012	6:00–9:00 p.m.	Dare County Administration Bldg., Manteo, NC	954 Marshall C. Collins Dr., Manteo, NC 27954.

TABLE 1—DATES, TIMES AND LOCATIONS OF THE SCOPING MEETINGS—Continued

Date	Time	Meeting locations	Address
* Week of June 10, (specific date to be determined).	* To be announced (MAFMC.org).	Mid-Atlantic Fishery Management Council Meeting, New York, NY.	Hilton New York, 1335 Avenue of the Americas, New York, NY 10019.
* Week of June 10, (specific date to be determined).	* To be announced (SAFMC.net).	South Atlantic Fishery Management Council Meeting, Orlando, FL.	Renaissance Orlando Airport Hotel, 5445 Forbes Place, Orlando, FL 32812.
* Week of June 17, (specific date to be determined).	* To be announced (NEFMC.org).	New England Fishery Management Council Meeting, Portland, ME.	Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101.

* The public will be notified when the Council agendas are finalized, and the precise date and time of scoping have been scheduled. For updated information please go to *www.nmfs.noaa.gov/sfa/hms/breakingnews.htm* or visit the Council Web sites indicated above.

The process of developing an FMP Amendment is expected to take approximately 2 years. In addition to future HMS AP input, public comment and future analyses, there are other relevant events anticipated that may impact the development of Amendment 7, including a BFT stock assessment during the fall of 2012, a meeting of the Convention on the International Trade of Endangered Species (CITES) in the spring of 2013, revisiting the ''species of concern'' designation under the Endangered Species Act in 2013, and the annual meetings of ICCAT in November 2012 and 2013.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: April 18, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–9756 Filed 4–20–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 78

Monday, April 23, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 17, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: School Foodservice Indirect Cost Study.

OMB Control Number: 0584–NEW.

Summary of Collection: The Healthy Hunger Free Kids Act of 2010 (Pub. L. 111–296), requires USDA to conduct a study to assess the extent to which school food authorities (SFAs) participating in the National School Lunch and Breakfast Program pay indirect costs. The objective of the School Foodservice Indirect Cost Study is to collect and analyze up-to-date data on school districts' policies and procedures for reporting and recovering indirect costs attributable to their foodservice operations. The ultimate goal of the study is to provide USDA and Congress the necessary information to assess the extent to which school districts identify, treat, and charge indirect costs attributable to their foodservice operations.

Need and Use of the Information: The study will help the Food and Nutrition Service understand the extent to which current regulations are being followed and if there is a need for additional regulations and/or legislation to ensure that school districts treat indirect costs in the same manner across all of their grant programs. Without the information FNS will not have the data necessary to address the questions posed by Congress.

Description of Respondents: Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 5,118.

Frequency of Responses: Report: Other (one-time).

Total Burden Hours: 3,159.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–9632 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Technical Assistance for Specialty Crops Program

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2013 Technical Assistance for Specialty Crops (TASC) program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2013 and to set out criteria for the award of funds in October 2012. The TASC program is administered by personnel of the Foreign Agricultural Service (FAS).

The statutory authority for TASC expires at the end of fiscal year 2012. This notice is being published at this time to allow awards to be made early in fiscal year 2013, provided that the program is reauthorized prior to that time. In the event this program is not reauthorized, or is substantially modified, FAS will publish a notice in the **Federal Register** rescinding this Notice of Funds Availability.

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. Any applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov*. Information is also available on the FAS Web site at *http://www.fas.usda.gov/mos/tasc/tasc.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

Authority: The TASC program is authorized by section 3205 of Public Law 107–171. TASC regulations appear at 7 CFR part 1487.

Purpose: The TASC program is designed to assist U.S. organizations by

providing funding for projects that address sanitary, phytosanitary, or related technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC program, are defined to include all cultivated plants, or the products thereof, produced in the United States, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

As a general matter, TASC program projects should be designed to address the following criteria:

- Projects should identify and address a sanitary, phytosanitary, or related technical barrier that prohibits or threatens the export of U.S. specialty crops;
- Projects should demonstrably benefit the represented industry rather than a specific company or brand;
- Projects must address barriers to exports of commercially-available U.S. specialty crops for which barrier removal would predominantly benefit U.S. exports; and
- Projects should include an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance.

Examples of expenses that CCC may agree to reimburse under the TASC program include, but are not limited to: initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

II. Award Information

In general, all qualified proposals received before the specified application deadline will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty crops worldwide preclude CCC from approving large budgets for individual projects. Proposals requesting more than $500,000 in any given year will not be considered. Additionally, private entities may submit multi-year proposals that may be considered in the context of a detailed strategic implementation plan. The maximum duration of an activity is 5 years. Funding in such cases may, in FAS' discretion, be provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. In order to validate funding eligibility, proposals must specify previous years of TASC funding for each proposed activity/title/market/constraint combination. Government entities are not eligible for multi-year funding.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. The number of approved projects that a TASC participant can have underway at any given time is five. Please see 7 CFR part 1487 for additional restrictions.

FAS will consider providing either grant funds as direct assistance to U.S. organizations or technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. FAS or another Federal agency may be involved in the implementation of approved projects.

III. Eligibility Information

1. Eligible Applicants: Any U.S. organization, private or government, with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. Cost Sharing or Matching: FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

3. Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. Application through the Unified Export Strategy (UES): Organizations are strongly encouraged to submit their applications to FAS through the UES application Internet Web site. Using the UES application process reduces paperwork and expedites FAS's processing and review cycle. Applicants planning to use the UES Internet-based system must contact FAS/Program Operations Division to obtain site access information, including a user ID and password. The UES Internet-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/*.

Although FAS highly recommends applying via the Internet-based UES application, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle, applicants also have the option of submitting an electronic version to FAS at *podadmin@fas.usda.gov*.

2. Content and Form of Application Submission: All TASC proposals must contain complete information about the proposed projects as described in § 1487.5(b) of the TASC program regulations. In addition, in accordance with the Office of Management and Budget's policy directive (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number.

An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the TASC program and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(iii) Provide its DUNS number in each application or plan it submits to CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the TASC program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive TASC funding.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

3. Submission Dates and Times: TASC funding is reviewed on a rolling basis during the fiscal year as long as

TASC funding is available as set forth below:

- Proposals received by, but not later than, 5 p.m. Eastern Daylight Time, May 21, 2012, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 21, 2012, will be considered in the order received for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an expedited evaluation. Such a proposal must include a specific request for expedited evaluation.

FAS will track the time and date of receipt of all proposals.

4. Funding Restrictions: Although funded projects may take place in the United States or abroad, all eligible projects must specifically address sanitary, phytosanitary, or related technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program, such as the costs of market research, advertising, or other promotional expenses, and will be set forth in the written program agreement between CCC and the participant. CCC will also not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

5. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, May 21, 2012, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, May 21, 2012, at *podadmin@fas.usda.gov* in order to receive the same consideration.

V. Application Review Information

1. Criteria: FAS follows the evaluation criteria set forth in § 1487.6 of the TASC regulations and in this Notice.

2. Review and Selection Process: FAS will review proposals for eligibility and will evaluate each proposal against the criteria referred to above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs. FAS may, when appropriate, request the assistance of other U.S. government subject area experts in evaluating the merits of a proposal.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of the submitted application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. Administrative and National Policy Requirements: The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC program regulations found at 7 CFR part 1487 in addition to this announcement. TASC program regulations are available at the following URL address: *http://www.fas.usda.gov/mos/tasc/default.asp*. Hard copies may be obtained by contacting the Program Operations Division at (202) 720–4327.

3. Reporting: TASC participants will be required to submit separate interim reports at 3, 6, and 9 months for each program year, and a final report, each of which evaluates their TASC project using the performance measures presented in the approved proposal, as set forth in the written program agreement.

VII. Agency Contact

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov*.

Signed at Washington, DC, on the 13 of April 2012.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–9633 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605.

SUMMARY: The Commodity Credit Corporation (CCC) announces it is inviting proposals for the 2013 Quality Samples Program (QSP). The intended effect of this notice is to solicit applications from eligible applicants and to set out the criteria for the award of funds under the program in October 2012. QSP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. Any applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.* Information is also available on the FAS Web site at *http://www.fas.usda.gov/mos/programs/QSP.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples,

exporting the samples, and providing the on-site technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement from QSP for the sample purchase price, the cost of transporting the samples domestically to the port of export, and then to the foreign port or point of entry. Transportation costs from the foreign port or point of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, QSP will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars in the importing country designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end-use consumers to demonstrate to importers consumer preference for that end product; and
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (*e.g.,* not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and audiences who:

- Have not previously purchased the U.S. commodity that will be transported under QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity (*e.g.,* because of improper specification, blending, formulation, sanitary, or phytosanitary issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity; or
- Need technical assistance in processing or using the U.S. commodity.

II. Award Information

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples. Financial assistance will be made available on a reimbursement basis only; cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements between the applicant and CCC. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

III. Eligibility Information

1. Eligible Applicants: Any United States private or government entity with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities.

2. *Cost Sharing:* FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals to approve for funding.

3. Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. *Address to Request Application Package:* Organizations are strongly encouraged to submit their QSP applications to FAS through the Uniform Export Strategy (UES) application Internet Web site. The UES allows applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding and recommendations for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants planning to use the Internet-based system must contact the FAS/Program Operations Division to obtain Web site access information. The Internet-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

Although FAS highly recommends applying via the Internet-based application, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle, applicants also have the option of submitting an electronic version of their application to FAS at *podadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for QSP, an applicant must submit to FAS information detailed in this notice. Additionally, in accordance with the Office of Management and Budget's policy directive (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a

Dun and Bradstreet Data Universal Numbering System (DUNS) number.

An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

In addition, in accordance with 2 CFR Part 25, each entity that applies to QSP and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(iii) Provide its DUNS number in each application or plan it submits to CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the QSP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive QSP funding.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

Proposals should contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;
- Type of organization;
- Name, telephone number, fax number, and email address of the primary contact person;
- A description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) Market information, including:

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 2006–2012;

(c) Project information, including:

- A brief project title;
- Amount of funding requested;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2013–2015, which will be used to measure the effectiveness of the project, a benchmark performance measure for 2011, the viability of long-term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);
- A sample description (*i.e.,* commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought;
- Beginning and end dates for the proposed project;
- The importer's role in the project regarding handling and processing the commodity sample; and
- Explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash, goods or services.

3. Submission Dates and Times: QSP funding is reviewed on a rolling basis during the fiscal year as long as remaining QSP funding is available as set forth below:

- Proposals received by, but not later than 5 p.m. Eastern Daylight Time, May 21, 2012, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during this review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 21, 2012, will be considered in the order received for funding only if funding remains available.

4. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, May 21, 2012, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, May 21, 2012, at *podadmin@fas.usda.gov* in order to receive the same consideration.

5. Funding Restrictions: Proposals that request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available QSP funds.

FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash, goods and services of the U.S. industry, and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Proposals will be evaluated by the Commodity Branch offices in the FAS' Cooperator Programs Division. The Commodity Branches will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit proposals and funding recommendations to the Deputy

Administrator, Office of Trade Programs.

2. Anticipated Announcement Date: Announcements of funding decisions for QSP are anticipated during October 2012.

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of the submitted application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding, and any cost-share contribution requirements.

2. *Administrative and National Policy Requirements:* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement.

QSP projects are subject to review and verification by FAS' Compliance, Security and Emergency Planning Division. Upon request, a QSP participant shall provide to CCC the original documents that support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

3. *Reporting:* A written evaluation report must be submitted within 90 days of the expiration of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email:* podadmin@fas.usda.gov.

Signed at Washington, DC, on the 13th of April 2012.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–9635 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.601.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2013 Market Access Program (MAP). The intended effect of this notice is to solicit applications from eligible applicants and to set out criteria for the award of funds in October 2012. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

The statutory authority for MAP expires at the end of fiscal year 2012. This notice is being published at this time to allow awards to be made early in fiscal year 2013, provided that the program is reauthorized prior to that time. In the event this program is not reauthorized, or is substantially modified, FAS will publish a notice in the **Federal Register** rescinding this Notice of Funds Availability.

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or by phone: (202) 720–4327, or by fax: (202) 720–9361, or by email: *podadmin@fas.usda.gov.* Information is also available on the FAS Web site at *http://www.fas.usda.gov/mos/programs/map.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The MAP is authorized under Section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Purpose: The MAP is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis, and applications will be reviewed against the evaluation criteria contained herein and in the MAP regulations. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS considers whether the applicant provides a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA.

II. Award Information

Under the MAP, the CCC enters into agreements with eligible participants to share the cost of certain overseas marketing and promotion activities. MAP participants may receive assistance for generic or brand promotion activities. For generic activities, funding priority is given to organizations that have the broadest possible producer representation of the commodity being promoted and that are nationwide in membership and scope. Only non-profit U.S. agricultural trade organizations, nonprofit state regional trade groups (SRTGs), U.S. agricultural cooperatives, and State government agencies can participate directly in the brand program. The MAP generally operates on a reimbursement basis.

III. Eligibility Information

1. Eligible Applicants: To participate in the MAP, an applicant must be a nonprofit U.S. agricultural trade organization, a nonprofit SRTG, a U.S. agricultural cooperative, or a State government agency. A small-sized U.S.

commercial entity may participate through a MAP participant.

2. Cost Sharing: To participate in the MAP, an applicant must agree to contribute resources to its proposed promotional activities. The MAP is intended to supplement, not supplant, the efforts of the U.S. private sector. In the case of generic promotion, the contribution must be at least 10 percent of the value of resources provided by CCC for such generic promotion. In the case of brand promotion, the contribution must be at least 50 percent of the total cost of such brand promotion.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost-share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The MAP regulations, in section 1485.13(c), provide detailed discussion of eligible and ineligible cost-share contributions.

3. Other: Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance, and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations are encouraged to submit their MAP applications to the FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows interested applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding and recommendations for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants planning to use the Internet-based system must contact the FAS/Program Operations Division to obtain Web site access information. The Internet-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

The FAS highly recommends applying via the Internet-based application, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version of their application to FAS at *podadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for the MAP, an applicant must submit to the FAS information required by the MAP regulations in section 1485.13. In addition, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to MAP and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(iii) Provide its DUNS number in each application or plan it submits to CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to MAP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive MAP funding.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) program, the Emerging Markets Program, the Quality Samples Program, and the Technical Assistance for Specialty Crops program. Any organization that is not interested in applying for the MAP, but would like to request assistance through one of the other programs mentioned should contact the Program Operations Division.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. All MAP applicants, regardless of the method of submitting an application, must also submit by the application deadline, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G) to the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250. Applications or certifications received after this date will not be considered.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the MAP regulations in section 1485.16.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review:

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear in sections 1485.12 and 1485.13 of the MAP regulations. Applications that meet the requirements then will be further evaluated by the appropriate Commodity Branch office of the FAS/Cooperator Programs Division. The Commodity Branch will review each application against the criteria listed in section 1485.14(b) and (c) of the MAP regulations as well as in this Notice. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review:

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applicants will compete for funds on the basis of the following allocation criteria as appropriate (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (2010–2013) of all contributions under the MAP (cash and goods and services provided by U.S. entities in support of

overseas marketing and promotion activities) compared to;

• The applicant's 4-year average share (2010–2013) of the funding level for all MAP participants.

(b) Past Performance (30)

• The 3-year average share (2009–2011) of the value of exports promoted by the applicant compared to;

• The applicant's 2-year average share (2011–2012) of the funding level for all MAP participants plus, for those groups participating in the Cooperator program, the 2-year average share (2011–2012) of all Cooperator program budgets.

(c) Projected Export Goals (15)

• The total dollar value of projected exports promoted by the applicant for 2013 compared to;

• The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

• Actual exports for 2011 as reported in the 2013 MAP application compared to;

• Past projections of exports for 2011 as specified in the 2011 MAP application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total MAP funds available and then multiplied by each weight factor as described above to determine the amount of funds allocated to each applicant.

2. Anticipated Announcement Date: Announcements of funding decisions for the MAP are anticipated during October 2012.

VI. Award Administration Information

1. Award Notices: The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and program agreement to each approved applicant. The approval letter and program agreement will specify the terms and conditions applicable to the project, including the levels of MAP funding and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the MAP regulations, which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/map.asp.* Hard copies may be obtained by contacting the Program Operations Division.

3. Reporting: The FAS requires various reports and evaluations from MAP participants. Reporting requirements are detailed in the MAP regulations in section 1485.20(b) and (c).

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture at: Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or by phone: (202) 720–4327, or by fax: (202) 720–9361, or by *email: podadmin@fas.usda.gov.*

Dated: Signed at Washington, DC, on the 13th of April 2012.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–9639 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Foreign Market Development Cooperator Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.600.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2013 Foreign Market Development Cooperator (Cooperator) program. The intended effect of this notice is to solicit applications from eligible applicants for 2013 and to set out criteria for the award of funds under the program in October 2012. The Cooperator program is administered by personnel of the Foreign Agricultural Service (FAS).

The statutory authority for FMD expires at the end of fiscal year 2012. This notice is being published at this time to allow awards to be made early in fiscal year 2013, provided that the program is reauthorized prior to that time. In the event this program is not reauthorized, or is substantially modified, FAS will publish a notice in the **Federal Register** rescinding this Notice of Funds Availability.

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.* Information is also available on the FAS Web site at *http://www.fas.usda.gov/mos/programs/fmdprogram.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The Cooperator program is authorized by title VII of the Agricultural Trade Act of 1978, as amended. Cooperator program regulations appear at 7 CFR part 1484.

Purpose: The Cooperator program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein and in the Cooperator program regulations. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS considers whether the applicant provides a clear, long-term agricultural trade strategy, and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA.

II. Award Information

Under the Cooperator program, the FAS enters into agreements with eligible nonprofit U.S. trade organizations to share the cost of certain overseas marketing and promotion activities. Funding priority is given to organizations that have the broadest possible producer representation of the commodity being promoted and that are nationwide in membership and scope. Cooperators may receive assistance only for generic activities that do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. Eligible Applicants: To participate in the Cooperator program, an applicant

must be a nonprofit U.S. agricultural trade organization.

2. Cost Sharing: To participate in the Cooperator program, an applicant must agree to contribute resources to its proposed promotional activities. The Cooperator program is intended to supplement, not supplant, the efforts of the U.S. private sector. The contribution must be at least 50 percent of the value of resources provided by CCC for activities conducted under the project agreement.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost-share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The Cooperator program regulations, including sections 1484.50 and 1484.51, provide detailed discussion of eligible and ineligible cost-share contributions.

3. Other: Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. Address to Request Application Package: Organizations are encouraged to submit their FMD applications to the FAS through the Unified Export Strategy (UES) application Internet Web site. The UES allows applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding and recommendations for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade faced, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants planning to use the Internet-based system must contact the FAS/Program Operations Division to obtain site access information. The Internet-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

The FAS highly recommends applying via the Internet-based application as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version of their application to FAS at *podadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for the Cooperator program, an applicant must submit to the FAS information required by the Cooperator program regulations in section 1484.20. In addition, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the Cooperator program and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(iii) Provide its DUNS number in each application or plan it submits to CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the Cooperator program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive funding under the Cooperator program. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), the Emerging Markets Program, the Quality Samples Program, and the Technical Assistance for Specialty Crops Program. Any organization that is not interested in applying for the Cooperator program but would like to request assistance through one of the other programs mentioned should contact the Program Operations Division.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. All Cooperator program applicants, regardless of the method of submitting an application, also must submit by the application deadline, an original signed certification statement as specified in 7 CFR 1484.20(a)(14) to the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250. Applications or certifications received after this date will not be considered.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the Cooperator program regulations, including sections 1484.54 and 1484.55.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear in sections 1484.14 and 1484.20 of the Cooperator program regulations as well as in this Notice. Applications that meet the requirements then will be further evaluated by the appropriate Commodity Branch office of the FAS/Cooperator Programs Division. The Commodity Branch will review each application against the criteria listed in section 1484.21 of the Cooperator program regulations. The purpose of this review is to identify meritorious proposals. The Commodity Branch then recommends an appropriate funding level for each approved application for consideration by the Office of the Deputy Administrator, Office of Trade Programs.

(2) Phase 2—Competitive Review

Meritorious applications are passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among those applicants. Applicants will compete for funds on the basis of the following allocation criteria as appropriate (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6-year average share (2008–2013) of all contributions under the Cooperator program (contributions

may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to;

• The applicant's 6-year average share (2008–2013) of the funding level for all Cooperator program participants.

(b) Past Export Performance (20)

• The 6-year average share (2007–2012) of the value of exports promoted by the applicant compared to;

• The applicant's 6-year average share (2007–2012) of the funding level for all Cooperator participants plus a 6-year average share (2007–2012) of all MAP budgets, if any.

(c) Past Demand Expansion Performance (20)

• The 6-year average share (2007–2012) of the total value of world trade of the commodities promoted by the applicant compared to;

• The applicant's 6-year average share (2007–2012) of all Cooperator program expenditures plus a 6-year average share (2007–2012) of all MAP expenditures, if any.

(d) Future Demand Expansion Goals (10)

• The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2018 compared to;

• The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

• The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2011 compared to;

• The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2011, as specified in the 2008 Cooperator program application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total Cooperator program funds available and then multiplied by each weight factor to determine the amount of funds allocated to each applicant.

2. Anticipated Announcement Date: Announcements of funding decisions for the Cooperator program are anticipated during October 2012.

VI. Award Administration Information

1. Award Notices: The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and project agreement will specify the terms and conditions applicable to the project, including the levels of Cooperator program funding, and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the Cooperator program regulations, which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/fmdprogram.asp*. Hard copies may be obtained by contacting the Program Operations Division.

3. Reporting: The FAS requires various reports and evaluations from Cooperators. Reporting requirements are detailed in the Cooperator program regulations in sections 1484.53, 1484.70, and 1484.72.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture.

Courier address: Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov*.

Signed at Washington, DC, on the 13th of April 2012.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–9638 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Emerging Markets Program

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2013 Emerging Markets Program (EMP). The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2013 and to set out criteria for the award of funds under the program in October 2012. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

The statutory authority for EMP expires at the end of fiscal year 2012. This notice is being published at this time to allow awards to be made early in fiscal year 2013, provided that the program is reauthorized prior to that time. In the event this program is not reauthorized, or is substantially modified, FAS will publish a notice in the **Federal Register** rescinding this Notice of Funds Availability.

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, May 21, 2012. Any applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

Authority: The EMP is authorized by section 1542(d)(1) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. The EMP regulations appear at 7 CFR part 1486.

1. Purpose. The EMP assists U.S. entities in developing, maintaining, or expanding exports of U.S. agricultural commodities and products by funding activities that improve emerging markets' food and rural business systems, including reducing potential trade barriers in such markets. The EMP is intended primarily to support export market development efforts of the private sector, but EMP resources may also be used to assist public organizations.

All U.S. agricultural commodities, except tobacco, are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Proposals that seek support for multiple commodities are also eligible. EMP funding may only be used to develop, maintain, or expand emerging markets for U.S. agricultural commodities and products through generic activities. EMP funding may not be used to support the export of another country's products to the United States, or to promote the development of a foreign economy as a primary objective.

2. Appropriate Activities. All EMP projects must fall into at least one of the following four categories:

(a) Assistance to teams consisting primarily of U.S. individuals expert in assessing the food and rural business systems of other countries. This type of

EMP project must include all three of the following:

- Conduct an assessment of the food and rural business system needs of an emerging market;
- Make recommendations on measures necessary to enhance the effectiveness of these systems; and
- Identify opportunities and projects to enhance the effectiveness of the emerging market's food and rural business systems.

To be eligible, such proposals must clearly demonstrate that experts are primarily agricultural consultants, farmers, other persons from the private sector, and government officials, and that they have expertise in assessing the food and rural business systems of other countries.

(b) Assistance to enable individuals from emerging markets to travel to the United States so that these individuals can, for the purpose of enhancing the food and rural business systems in their countries, become familiar with U.S. technology and agribusiness and rural enterprise operations by consulting with food and rural business system experts in the United States.

(c) Assistance to enable U.S. agricultural producers and other individuals knowledgeable in agricultural and agribusiness matters to travel to emerging markets to assist in transferring their knowledge and expertise to entities in emerging markets. Such travel must be to emerging markets. Travel to developed markets is not eligible under the program even if the traveler's targeted market is an emerging market.

(d) Technical assistance to implement the recommendations, projects, and/or opportunities identified under 2(a) above. Technical assistance that does not implement the recommendations, projects, and/or opportunities identified by assistance under 2(a) above is not eligible under the EMP.

Proposals that do not fall into one or more of the four categories above, regardless of previous guidance provided regarding the EMP, are not eligible for consideration under the program.

EMP funds may not be used to support normal operating costs of individual organizations, nor as a source to recover pre-award costs or prior expenses from previous or ongoing projects. Proposals that counter national strategies or duplicate activities planned or already underway by U.S. non-profit agricultural commodity or trade associations (''cooperators'') will not be considered. Other ineligible expenditures include: Branded product promotions (e.g., in-store, restaurant advertising, labeling, *etc.*); advertising, administrative, and operational expenses for trade shows; Web site development; equipment purchases; and the preparation and printing of brochures, flyers, and posters (except in connection with specific technical assistance activities such as training seminars). For a more complete description of ineligible expenditures, please refer to the EMP regulations.

3. Eligible Markets. The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward developing a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for U.S. agricultural commodities or products of U.S. agricultural commodities.

Because EMP funds are limited and the range of potential emerging market countries is worldwide, consideration will be given only to proposals that target countries or regional groups with per capita income of less than $12,275 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators; November 2011, *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS*]) and populations of greater than 1 million.

Income limits and their calculation can change from year to year with the result that a given country may qualify under the legislative and administrative criteria one year but not the next. Therefore, CCC has not established a fixed list of emerging market countries.

A few countries technically qualify as emerging markets but may require a separate determination before funding can be considered because of political sensitivities.

II. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. Priority consideration will be given to proposals that directly support or address at least one of the goals and objectives in the USDA and FAS Strategic Plans. The USDA Strategic Plan can be accessed at the following link: *http://www.ocfo.usda.gov/usdasp/sp2010/sp2010.pdf.* The FAS strategic plan can be accessed at the following link: *http://www.fas.usda.gov/admin/FAS%20StrategicPlan2010-15finalClearedFFAS.pdf.* The applicants' willingness to contribute resources, including cash, goods and services, will be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on the potential benefits to the industry represented by the applicant and the degree to which the proposal demonstrates industry support.

The limited funds and the range of eligible emerging markets worldwide generally preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most projects are funded at a level of less than $500,000 and for a duration of approximately one year. Private entities may submit multi-year proposals requesting higher levels of funding that may be considered in the context of a detailed strategic implementation plan. Funding in such cases is generally limited to three years and provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. Government entities are not eligible for multi-year funding.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide interim progress reports and final performance reports. Changes in the original project timelines and adjustments within project budgets must be approved in advance by FAS.

Note: EMP funds awarded to government agencies must be expended or otherwise obligated by close of business, September 30, 2013.

III. Eligibility and Qualification Information

1. Eligible Applicants: Any U.S. private or government entity (*e.g.,* universities, non-profit trade associations, agricultural cooperatives, state regional trade groups (SRTGs), state departments of agriculture, federal agencies, profit-making entities, and consulting businesses) with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by and financial support from the U.S. industry. For-profit entities are also eligible but may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities or promote their own products or services beyond specific uses approved by CCC in a given project.

U.S. export market development cooperators and SRTGs may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other CCC market development programs, *e.g.,* the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP). Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. Cost Sharing: No private sector proposal will be considered without the element of cost-share from the applicant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost-share, though the range in recent successful proposals has been between 35 and 75 percent. The degree of commitment to a proposed project, represented by the amount and type of private funding, is one factor used in determining which proposals will be approved for funding. Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals for which private industry is willing to commit cash, rather than in-kind contributions, such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a government agency. Contributions from USDA or other government agencies or programs may not be counted toward the stated cost-share requirement of other applicants. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost-share requirement, but may be counted in the total cost of the project.

3. Other: Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. Address to Request Application Package: EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system that provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Applicants are strongly encouraged to submit their applications to FAS through the UES application Internet Web site. The Internet-based format reduces paperwork and expedites the FAS processing and review cycle. Applicants planning to use the on-line UES system must contact the Program Operations Division to obtain site access information. The Internet-based application is located at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

Although FAS highly recommends applying via the Internet-based application, applicants also have the option of submitting an electronic version to FAS at *podadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for the EMP, an applicant must submit to FAS information required by this Notice of Funds Availability and the EMP regulations at 7 CFR part 1486. EMP regulations and additional information are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the EMP and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(iii) Provide its DUNS number in each application or plan it submits to CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the EMP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive EMP funding.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone and fax numbers;

(d) Tax ID number;

(e) DUNS number;

(f) Primary contact person;

(g) Full title of proposal;

(h) Target market(s);

(i) Current conditions in the target market(s) affecting the intended commodity or product;

(j) Description of problem(s) (*i.e.,* constraint(s)) to be addressed by the project, such as the need to assess and enhance food and rural business systems of the emerging market, lack of awareness by foreign officials of U.S. technology and business practices, impediments (infrastructure, financing, regulatory or other non-tariff barriers) to the effectiveness of emerging market's food and rural business systems previously identified by an EMP project that are to be implemented by the applicant, *etc.;*

(k) Project objectives;

(l) *Performance measures:* Benchmarks for quantifying progress in meeting the objectives;

(m) *Rationale:* Explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;

(n) Clear demonstration that successful implementation will benefit an emerging market's food and rural business system and/or reduce potential trade barriers, and will benefit a particular industry as a whole, not just the applicant(s);

(o) Explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(p) Specific description of activity/activities to be undertaken;

(q) Timeline(s) for implementation of activity, including start and end dates;

(r) Information on whether similar activities are or have previously been funded with USDA resources in the target country or countries (*e.g.,* under MAP and/or Cooperator programs);

(s) Detailed line item activity budget:

- Cost items should be allocated separately to each participating organization; and
- Expense items constituting a proposed activity's overall budget (*e.g.,* salaries, travel expenses, consultant fees, administrative costs, etc.), with a

line item cost for each, should be listed, clearly indicating:

(1) Which items are to be covered by EMP funding;

(2) Which by the participating U.S. organization(s); and

(3) Which by foreign third parties (if applicable).

Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip; and

(t) Qualifications of applicant(s) should be included as an attachment.

3. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses, such as indirect overhead charges, travel expenses, and consulting fees. CCC will also not reimburse unreasonable expenditures or expenditures made prior to approval of a proposal. Full details of the funding restrictions are available in the EMP regulations.

4. Submission Dates and Times: EMP funding is reviewed on a rolling basis during the fiscal year as long as EMP funding is available as set forth below:

- Proposals received by, but not later than, 5 p.m. Eastern Daylight Time, May 21, 2012, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 21, 2012, will be considered in the order received for funding only if funding remains available.

5. *Other Submission Requirements:* All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, May 21, 2012, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, May 21, 2012, at *podadmin@fas.usda.gov* in order to receive the same consideration.

V. Application Review Information

1. Criteria: Key criteria used in judging proposals include:

- The objective of the activities is to develop, maintain, or expand markets for U.S. agricultural exports by improving the effectiveness of the food and rural business systems in emerging markets;
- Appropriateness of the activities for the targeted market(s) and the extent to which the project identifies market barriers (e.g., a fundamental deficiency in the emerging market's food and rural business systems, and/or a recent change in those systems);
- Potential of the project to expand U.S. market share and increase U.S. exports or sales;
- Quality of the project's performance measures, and the degree to which they relate to the objectives, deliverables, and proposed approach and activities;
- Justification for Federal funding;
- Overall cost of the project and the amount of funding provided by the applicant and any partners; and
- Evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project, including timeliness and quality of reporting on past EMP activities.

Please see 7 CFR part 1486 for additional evaluation criteria.

2. Review and Selection Process: All applications undergo a multi-phase review within FAS, by appropriate FAS field offices, and, as needed, by the private sector Advisory Committee on Emerging Markets to determine the qualifications, quality, appropriateness of projects, and reasonableness of project budgets.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of the submitted application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the EMP regulations, which are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

3. Reporting. Quarterly progress reports for all programs 1 year or longer in duration are required. Projects of less than 1 year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content requirements for both types of reports are contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project as attachments to the final reports. Please see 7 CFR part 1486 for additional reporting requirements.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.*

Signed at Washington, DC on 13 day of April, 2012.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–9637 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest; Wyoming; Long Term Special Use Authorization for Wyoming Game and Fish Commission To Use National Forest System Land for Their Winter Elk Management Programs

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement an environmental impact statement.

SUMMARY: The Bridger-Teton National Forest received a request from the Wyoming Game and Fish Commission (WGFC) to continue to use facilities at Alkali Creek Feedground to conduct their winter elk feeding and related management programs. An environmental impact statement (EIS) studying this request was prepared in 2008; however a decision was not made on this feedground. The agency intends to supplement the EIS with information concerning changed circumstances. The proposed action is to issue the WGFC a Special Use Authorization (SUA) for the requested uses of Alkali Creek Feedground for up to twenty years.

DATES: Comments concerning the scope of the analysis must be received by May 23, 2012. Public comments will also be solicited upon release of the draft supplement to the EIS, expected in July 2012. The final supplement and a Record of Decision are expected in November 2012.

ADDRESSES: Send written comments to Forest Supervisor Jacqueline Buchanan, Bridger-Teton National Forest, P.O. Box 1888, Jackson, WY 83001. Comments may also be sent via email to *comments-intermtn-bridger-teton@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Pam Bode, Resources Staff Officer, at

pbode@fs.fed.us, 307–739–5513, or at Bridger-Teton National Forest, P.O. Box 1888, Jackson, WY 83001. 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: On July 15, 2008, Carole 'Kniffy' Hamilton, Forest Supervisor of the Bridger-Teton National Forest issued an EIS and signed a Record of Decision (ROD) concerning a Long Term Special Use Authorization for WGFC to use National Forest System Land for their Winter Elk Management Activities. The EIS included analysis of Alkali Creek and five other existing feedgrounds. In the ROD, Forest Supervisor Hamilton approved use at the five other feedgrounds and postponed the decision concerning Alkali Creek Feedground. This decision was postponed because more information was needed concerning the location of the Gros Ventre Wilderness boundary and vegetation effects adjacent to the feedground inside the Wilderness.

Purpose and Need for Action

The purpose and need for action is to respond to the WGFC request for a long term Special Use Permit authorizing intermittent occupancy and use of Alkali Creek Feedground for activities associated with the WGFC winter elk management program.

Proposed Action

The proposed action is to authorize the continued use of National Forest System (NFS) lands at Alkali Creek Feedground by the WGFC for corrals, sheds, one hay stack-yard containing two haysheds, a water facility and feeding grounds associated with their ongoing winter elk management program.

Possible Alternatives

Three alternatives were identified and studied in the 2008 FEIS: (1) The no action alternative—no special use authorization would be issued, (2) the proposed action—issuance of authorization to the WGFC, and (3) authorization of the proposed use with modifications.

Lead and Cooperating Agencies

The Forest Service is the Lead Agency. WGFC is a Cooperating Agency.

Responsible Official

The responsible Forest officer for this proposed action is Forest Supervisor Jacqueline Buchanan, Bridger-Teton National Forest, P.O. Box 1888, Jackson, WY 83001.

Nature of Decision To Be Made

The decision to be made is whether or not to authorize WGFC use of NFS lands at Alkali Creek Feedground for corrals, sheds, one hay stack-yard containing two haysheds, a water facility and feeding grounds associated with their ongoing elk feeding and management programs.

Preliminary Issues

After review of the 2008 EIS by an interdisciplinary team of Forest Service specialists, Forest Supervisor Buchanan determined that information concerning changed circumstances should be documented in a supplement and presented for consideration before a decision is made. The preliminary list of topics that may be considered for this supplement includes: Changes in species listed as Threatened, Endangered, or Sensitive, designation of Wild and Scenic Rivers, impacts to the Gros Ventre Wilderness, compliance with the Pronghorn Forest Plan amendment, effects related to recent fire activity, current information concerning wildlife diseases, and effects of changes in WGFC regulations. The public is encouraged to assist the Agency by contributing opinions and information about these or other changed circumstances since issuance of the 2008 EIS.

Permits or Licenses Required

If the decision is to authorize WGFC to continue to occupy and use NFS lands, it will be done through issuance of a Special Use Authorization with a term of up to 20 years. (36 CFR part 251 subpart B.)

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the Supplement to the EIS. Scoping letters will be sent to a mailing list of known interested parties and to parties who commented on the 2008 Draft EIS. Public meetings are not planned; however, interested parties are encouraged to contact Agency personnel if questions arise. The scoping process will assist the Agency in determining what changed information should be included in the supplement. Ongoing information related to this analysis will be posted on the Bridger-Teton National Forest Web site: *http://www.fs.usda.gov/goto/btnf/projects.*

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 supplement to the 2008 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 also be accepted and considered.

Dated: April 13, 2012.

Jose V. Castro,

Acting Forest Supervisor.

[FR Doc. 2012–9725 Filed 4–20–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1822]

Approval for Manufacturing Authority; Foreign-Trade Zone 177; Hoosier Stamping & Mfg. Corp. (Wheel Assemblies and Accessories); Chandler, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Ports of Indiana, grantee of Foreign-Trade Zone 177, has requested manufacturing authority on behalf of Hoosier Stamping & Mfg. Corp. d/b/a Hoosier Wheel (Hoosier Stamping) within FTZ 177 in Chandler, Indiana, (FTZ Docket 68–2011, filed 10–25–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 67132–67133, 10–31–2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 177 on behalf of Hoosier Stamping, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 16th day of April 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9742 Filed 4–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1826]

Reorganization/Expansion of Foreign-Trade Zone 127 Under Alternative Site Framework, Columbia, SC Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Richland-Lexington Airport District, grantee of Foreign-Trade Zone 127, submitted an application to the Board (FTZ Docket 57–2011, filed 09/23/11) for authority to reorganize and expand under the ASF with a service area of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Clarendon, Edgefield, Fairfield, Kershaw, Lee, Lexington, McCormick, Newberry, Richland, Saluda and Sumter Counties, South Carolina, within and adjacent to the Columbia Customs and Border Protection port of entry, FTZ 127's existing Site 1 would be categorized as a magnet site, and Site 2 would be categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 61075–61076, 10/03/11) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize and expand FTZ 127 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 2 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by April 30, 2015.

Signed at Washington, DC, this 16th day of April 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9745 Filed 4–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 10, 2012, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than May 3, 2012.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 21, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482·2813.

Dated: April 14, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–9744 Filed 4–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on May 8 and 9, 2012, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Tuesday, May 8

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Industry Presentation: E-beam Lithography
4. Industry Presentation: ENC Threshold for Satellite Modem
5. Industry Presentation: Semiconductor Manufacturing Equipment
6. New Business

Wednesday, May 9

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(I) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 1, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 7, 2011, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: April 17, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–9752 Filed 4–20–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of the Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 23, 2012.

SUMMARY: On January 17, 2012, the Department of Commerce (''Department'') published the final results of the antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''), covering the period June 1, 2009, through May 31, 2010.[1] We are amending our *Final Results* to correct a ministerial error made in the calculation of the antidumping duty margin for Changshan Peer Bearing Company, Ltd. (''CPZ/SKF'') pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.224(e).

FOR FURTHER INFORMATION CONTACT: Demitri Kalogeropoulos AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2623.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2012, the Department published the *Final Results.* On January 23, 2012, pursuant to 19 CFR 351.224(c), the Timken Company (''Timken'') submitted an allegation of a ministerial error regarding the valuation of the steel bar production input for CPZ/SKF and requested that the Department correct the alleged ministerial error in the calculation of CPZ/SKF's dumping margin. No other party submitted ministerial error allegations.

Before the Department could take action on the alleged ministerial error, both Timken and CPZ/SKF filed summonses and complaints with the U.S. Court of International Trade (''CIT'') challenging the *Final Results,* which vested the CIT with jurisdiction over the administrative proceeding. On March 29, 2012, the CIT granted the Department leave to amend the *Final Results.*[2]

Ministerial Errors

A ministerial error as defined in section 751(h) of the Act includes ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.''[3]

After analyzing the ministerial error allegation, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made certain ministerial errors in our calculations for the *Final Results.* For a detailed discussion of these ministerial errors, as well as the Department's analysis of the errors and allegation, *see* the Memorandum to the File, ''Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Allegation of Ministerial Error,'' dated concurrently with this notice (''Ministerial Error Memo'').

Because the cash deposit rate for two other exporters was based on the calculated rate for CPZ/SKF, and that margin has changed since the *Final Results,* the separate rate for these two exporters has changed as well. The amended weighted-average dumping margins are as follows:

AMENDED FINAL RESULTS

Exporters	Amended Final Margin (Percent)
Changshan Peer Bearing Co., Ltd.	14.98
Zhejiang Sihe Machine Co., Ltd.	14.98
Xinchang Kaiyuan Automotive Bearing Co., Ltd.	14.98

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

[1] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part,* 77 FR 2271 (January 17, 2012) (''Final Results''), and accompanying Issues and Decision Memorandum (''IDM'').

[2] *See The Timken Company* v. *United States, Consol. Ct. No. 12–00035 (CIT March 29, 2012).*

[3] *See also* 19 CFR 351.224(f).

review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). On January 31, 2012, and February 2, 2012, the CIT issued injunctions enjoining liquidation of certain entries which are subject to the antidumping duty order on TRBs from the PRC, for the POR.[4] Accordingly, the Department will not issue assessment instructions for any entries subject to the above-mentioned injunctions to CBP after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after January 17, 2012, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For CPZ/SKF, Zhejiang Sihe Machine Co., Ltd., and Xinchang Kaiyuan Automotive Bearing Co., Ltd., the cash deposit rate will be the amended final margin rate shown above in the ''Amended Final Results'' section of this notice; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(a)(1), 751(h) and 777(i)(1) of the Act.

Dated: April 16, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9740 Filed 4–20–12; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Changshan Peer Bearing Co., Ltd* v. *United States,* Court No. 12–0039 (CIT February 2, 2012) and *The Timken Company* v. *United States,* Court No. 12–0035(CIT January 31, 2012) both amended on March 8, 2012.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold the 48th meeting of its Fishery Data Coordinating Committee (FDCC) to review the progress of data collection improvements, identifying the next steps in data improvements, changes in the FDCC structure, operation, and membership.

DATES: The 48th FDCC meeting will be held on May 9, 2012. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 48th FDCC meeting will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the FDCC Meeting

May 9, 2012—8:30 p.m.–5 p.m.

1. Welcome remarks
2. Introductions
3. Approval of agenda
4. Review of the 47th FDCC Action items
5. Status of FY 2012 WPacFIN Operations
   A. Priorities and plans
6. Recent actions towards improving data collection: Findings and solutions
7. Archipelagic Plan Team recommendations on data collection and reporting
8. Omnibus proposal for improving the existing fishery data, data collection, and fishery status reporting
9. Next steps on data collection improvement and enhancing FDCC performance
   A. Follow up on the commitments expressed in the December workshop

B. Data collection improvement under the WPSAR framework
C. Enhancing FDCC—a proposal for change
10. Status of current budgets for data collection
A. Identification of other sources of funding
11. Other businesses
12. Recommendations
13. Next FDCC meeting schedule
14. Adjourn

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 17, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–9603 Filed 4–20–12; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Mortgage Assistance Relief Services that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 23, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–0007, by any of the following methods:

- *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC, 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*
- *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Assistance Relief Services (Regulation O) 12 CFR Part 1015.

OMB Number: 3170–0007.

Abstract: The required disclosures under Regulation O assist prospective purchasers of mortgage assistance relief services (MARS) in making well informed decisions and avoiding deceptive and unfair acts and practices. The information that must be kept under Regulation O's recordkeeping requirements is used by the CFPB and other relevant agencies for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits.

Estimated Number of Responses: 1,000.

Estimated Time per Response: 32 hour 30 minutes.

Estimated Total Annual Burden Hours: 32,500.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9642 Filed 4–20–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Mortgage Acts and Practices that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 23, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–0009, by any of the following methods:

- *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*
- *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Acts and Practices (Regulation N) 12 CFR part 1014.

OMB Number: 3170–0009.

Abstract: The Omnibus Appropriations Act, as clarified by Section 511 of the Credit CARD Act, and as amended by Section 1097 of the Dodd-Frank Act directs the CFPB to issue rules that ''relate to unfair or deceptive acts or practices'' regarding mortgage loans. Regulation N prohibits

misrepresentations about the terms of mortgage credit products in commercial communications and requires that covered persons keep certain related records for a period of twenty-four (24) months from last dissemination. Specifically, Regulation N requires covered persons to retain: (1) Copies of all materially different commercial communications disseminated, including but not limited to sales scripts, training materials, related marketing materials, Web sites, and weblogs; (2) documents describing or evidencing all mortgage credit products available to consumers during the time period in which each commercial communication was disseminated, 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 each commercial communication was disseminated, including but not limited to the names and terms of each such additional product or service available to consumers. A failure to keep such records is a violation of Regulation N. The information that Regulation N requires covered persons to retain is necessary to ensure efficient and effective law enforcement to address deceptive practices that occur in the mortgage advertising area. To gauge whether covered persons are complying with Regulation N or making prohibited misrepresentations, it is necessary to review the commercial communications that were disseminated and the information about the mortgage credit products and relevant additional products or services available during the time period in which each commercial communication was disseminated. Furthermore, a strong recordkeeping provision is necessary to foster effective enforcement of Regulation N.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits.

Estimated Number of Responses: 1,300,000.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 3,900,000.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9643 Filed 4–20–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(a)(1)(D)). The Bureau is soliciting comments regarding the information collection requirements relating to the Consumer Leasing Act (CLA) enforcement actions that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 23, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB approval No. 3170–0006, by any of the following methods:

- *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*
- *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consumer Leasing Act (Regulation M) 12 CFR part 1013.

OMB Number: 3170–0006.

Abstract: Federal and state enforcement and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of leases have been provided to consumers prior to consummation of the lease. This information provides the primary evidence of law violations in Consumer Leasing Act (CLA) enforcement actions brought by Federal agencies. Without Regulation M's recordkeeping requirement, the agencies' ability to enforce the CLA would be significantly impaired. As noted above, consumers rely upon the disclosures required by the CLA and Regulation M for information to comparison shop among leases, as well as to ascertain the true costs and terms of lease offers. Enforcement agencies and private litigants need the information in these disclosures and other requirements to enforce the CLA and Regulation M.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits.

Estimated Number of Responses: 67,858.

Estimated Time per Response: 1 hour 28 minutes.

Estimated Total Annual Burden Hours: 100,058.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9641 Filed 4–20–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), 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. 3507(c)(2)(A)). The Bureau is soliciting comments regarding the information collection requirements relating to the Real Estate Settlement Procedures Act

that have been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before May 23, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by OMB number 3170–0016, by any of the following methods:

- *Agency Contact:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552: (202) 435–7741: *CFPB_Public_PRA@cfpb.gov.*
- *OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joseph Durbala, (202) 435–7893, at the Consumer Financial Protection Bureau, (Attention: Joseph Durbala, PRA Office) 1700 G Street NW., Washington, DC 20552, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Real Estate Settlement Procedures Act (Regulation X) 12 CFR Part 1024.

OMB Number: 3170–0016.

Abstract: Certain disclosures are required by the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended by Section 461 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), and other various amendments. Required disclosures include: The Good Faith Estimate (GFE), the Special Information Booklet, the HUD–1/HUD–1A Settlement Statements, the Servicing Disclosure Statement, and, as applicable, the Servicing Transfer Disclosure. Other disclosures may be required under certain circumstances and include: The Initial Escrow Account Statement, the Annual Escrow Account Statement, the Affiliated Business Disclosure, and the Consumer Disclosure for Voluntary Escrow Account Payments. This collection helps to protect consumers in several respects. The Special Information Booklet helps to protect consumers from unnecessarily high settlement costs by providing information about the nature and cost of real estate settlement services. The GFE and HUD–1/HUD–1A Settlement Statements enable consumers to compare estimated settlement costs with actual settlement costs. The Affiliated Business Disclosure helps to protect borrowers from unnecessarily high settlement service charges due to the settlement service provider's use of an affiliated provider. Disclosures related to the servicing of the mortgage loan help to protect consumers if the servicing of the loan could be or is transferred. Disclosures related to consumers' escrow accounts help to protect them from unnecessarily high escrow charges.

Affected Public: Businesses or other for profits.

Estimated Number of Responses: 149,590,000.

Estimated Time per Response: 7 Minutes.

Estimated Total Annual Burden Hours: 17,183,000.

Dated: April 6, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–9645 Filed 4–20–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than May 23, 2012. The new system of records will be effective June 4, 2012, unless the comments received result in a contrary determination.

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

- *Electronic: privacy@cfpb.gov.*
- *Mail or Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, established the CFPB to administer and enforce federal consumer financial protection law. The Regulatory Flexibility Act (''RFA'') (Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and section 1100G of the Dodd-Frank Act (Pub. L. 111–203) require the CFPB to notify the Small Business Administration's Chief Counsel for Advocacy (''Chief Counsel'') prior to issuing certain proposed rules and then to convene a review panel and collect advice and recommendations from representatives of small entities, as defined pursuant to the RFA, on potential economic impacts of the proposed rule under consideration. The RFA also requires the review panel to issue a public report on the comments of the small entity representatives and the panel's findings on certain matters (the ''review panel process'').

In addition, the RFA, as amended, requires the CFPB to identify representatives of small entities in consultation with the Chief Counsel and to collect advice and recommendations from these representatives as to: (1) any projected increase in the cost of credit for small entities; and (2) significant alternatives to the proposed rule that minimize this impact prior to issuing it (the ''cost of credit consultation process'').

The new system of records described in this notice, ''CFPB.017—CFPB Small Business Review Panels and Cost of Credit Consultations,'' will maintain records concerning the activities and operations of the CFPB in connection with the review panel and cost of credit consultation processes as well as related outreach events.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About

Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.017—CFPB Small Business Review Panels and Cost of Credit Consultations'' is published in its entirety below.

Dated: April 16, 2012.

Claire Stapleton,

Chief Privacy Officer.

CFPB.017

SYSTEM NAME:

CFPB Small Business Review Panels and Cost of Credit Consultations.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: (1) Individual representatives of small entities who, in their business capacity, may participate in or attend meetings held in connection with the review panel and cost of credit consultation processes or other CFPB related outreach events; and (2) other attendees or individual guests of small entity representatives who may attend meetings held in connection with the review panel and cost of credit consultation processes or other related outreach events; and (3) CFPB employees or other federal agency employees who participate in the events.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will include information related to small businesses, small organizations, and small governmental jurisdictions, as defined pursuant to the RFA, and individual representatives and guests of these small entities who are invited to or are attending meetings or consultations held in connection with the review panel and/or cost of credit consultation processes or other events, or who are otherwise participating in or requesting to participate in such meetings, consultations, or other related events. Such information may include: (1) Contact information (name, title, telephone number, email address); (2) name of employer and memberships or affiliation with trade associations or other organizations; (3) applicable business size standard and North American Industry Classification System (NAICS) code; (4) annual revenues, asset size, and number of employees; (5) scope and nature of business activities; (6) affiliated entities; (7) invitations to and participation in the review panel or cost of credit consultation processes, or other CFPB related outreach event; (8) written comments, correspondence, or other materials submitted in connection with the review panel and/or cost of credit consultation processes; and (9) information necessary to obtain entry into a CFPB or other government facility (address, telephone number, date of birth, Social Security number, country of citizenship). Information maintained on individual guests of small entity representatives who may attend meetings held in connection with the review panel and/or cost of credit consultation processes or other CFPB related outreach events will include: (1) Contact information (name, title, telephone number, email address); (2) employer or sponsor name; (3) information on membership in or affiliation with trade associations or other organizations; (4) invitations to and participation or requested participation in the review panel and/or cost of credit consultation processes, or other CFPB related outreach event; and (5) information necessary to obtain entry into a CFPB or other government facility (address, telephone number, date of birth, Social Security number, country of citizenship).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, sections 1011 and 1012, codified at 12 U.S.C. 5491 and 5492. Public Law 96–354, as amended by Public Law 104–121 and Public Law 111–203, codified at 5 U.S.C. 601 *et seq.*

PURPOSE(S):

The purpose of the system is to collect and maintain information relating to potential small entity representatives who may or will: (1) consult with the CFPB and other Small Business Review Panel members and provide advice and recommendations about the potential economic impacts of regulatory proposals under consideration on small entities subject to the proposals; and/or (2) consult with the CFPB about any projected impact on the cost of credit to small entities related to the proposals under consideration and significant alternatives to minimize any such impact while achieving statutory objectives. The system will also collect and maintain information relating to guests of small entity representatives who may or will attend such meetings or consultations with the CFPB and other Small Business Review Panel members. The records are used in connection with and for administration of the review panel and cost of credit consultation processes, including meetings or consultations with small entity representatives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body before which the CFPB is authorized to appear, where the use of such information by the DOJ is deemed by the CFPB to be relevant and

necessary to the litigation, and such proceeding names as a party or interests:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) The public in the form of a list of the individual and business names of the invited or selected participants;

(9) Other representatives of small entities who have been invited or selected to participate in the review panel and/or cost of credit consultation processes and related meetings or other events, and persons attending such meetings, consultations, or other related events;

(10) The Office of Advocacy of the Small Business Administration, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and any of their employees in their official capacity; and

(11) Appropriate federal organizations or agencies in connection with a joint or interagency rulemaking process or consultation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by one or more of the following: the name of the individual, business or employer name; membership or affiliation with trade associations or other organizations; applicable business size standard and NAICS code; affiliated entities; scope or nature of business activities.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Small Business Regulatory Enforcement Fairness Act Manager, 1500 Pennsylvania Ave NW. (Attn: 1801 L Street NW.), Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual who is the subject of these records, and/or the association or organization providing the information on behalf of one of its members, or individual guests of small entity representatives, and the CFPB staff involved in the Small Business and Cost of Consultation Panel meetings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–9667 Filed 4–20–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, herein referred to as the Consumer Financial Protection Bureau (''CFPB'' or ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than May 23, 2012. The new system of records will be effective June 4, 2012 unless the comments received result in a contrary determination.

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

- *Electronic: privacy@cfpb.gov.*
- *Mai/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law No. 111–203, Title X, established the CFPB to administer and enforce the federal consumer financial protection laws. The CFPB will maintain the records covered by this notice.

The new system of records described in this notice, CFPB.014—Direct Registration and User Management System, will be used to provide authorized individuals, including CFPB employees and members of the public who have business with the Bureau, access to or interaction with CFPB information technology resources. A description of the new system of records follows this Notice.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.014—CFPB Direct Registration and User Management System'', is published in its entirety below.

Dated: April 16, 2012.

Claire Stapleton,

Chief Privacy Officer.

CFPB.014

SYSTEM NAME:

Direct Registration and User Management System.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G St NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include all persons who are authorized to access CFPB information technology resources, including without limitation: (1) Employees, contractors, and any lawfully designated representative of the above, including representatives of Federal, State, territorial, tribal, or local government agencies or entities, in furtherance of the CFPB's mission; (2) individuals who have business with the CFPB and who have provided personal information in order to facilitate access to CFPB information technology resources; and (3) individuals who are points of contact provided for government business, operations, or programs, and the individuals they list as emergency or other contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain data relating to individuals, including but not limited to: name; business and affiliations, including verification of affiliation; facility; positions held; telephone numbers, including business and cellular, home numbers, and numbers where individuals can be reached while on travel or otherwise away from the office; level of access; home or other provided address for the receipt of issued IT equipment or resources; email addresses of senders and recipients; records of access to CFPB or Treasury computers and networks including equipment issued, user ID and passwords, date(s) and time(s) of access, IP address of access, logs of internet activity and records on the authentication of the access request; records of identity management related to individual user's request including universal resource locator of individual's chosen identity assurance certificate provider and response from certificate provider of positive or negative authentication; and positions or titles of contacts, their business or organizational affiliations, and other contact information provided to the Bureau that is derived from other sources to facilitate authorized access to CFPB Information Technology resources.

The information in this system includes information relating to system access and does not include the data held within the systems or information technology resources to which access or interaction is sought.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Section 1012, codified at 12 U.S.C. 5492.

PURPOSE(S):

The information in the system is being collected to enable the CFPB to provide authorized individuals access to CFPB information technology resources.

The system enables the CFPB to maintain: account information required for approved access to information technology; lists of individuals seeking or receiving access to CFPB information technology or equipment; lists of individuals who are appropriate organizational points of contact; and lists of individuals who are emergency points of contact. The system will also enable the CFPB to provide individuals access to certain programs and meeting attendance and where appropriate allow for sharing of information between individuals in the same operational program to facilitate collaboration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's Rules for the Disclosure of Records and Information, promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of record;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory

organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, without limitation, the individual's name, address, account number, phone number or email address, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Chief Information Officer, 1700 G Street NW., Washington, DC 20552.

RETENTION AND DISPOSAL:

The CFPB will maintain computer and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals and entities associated with or granted access to CFPB information technology resources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–9668 Filed 4–20–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Elementary and Secondary Education; State Educational Agency Local Educational Agency, and School Data Collection and Reporting Under the Elementary and Secondary Education Act of 1965 (ESEA), Title I, Part A

SUMMARY: Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act, and its regulations contain several existing provisions that require State educational agencies (SEAs), local educational agencies (LEAs), and schools to collect and disseminate information. The Paperwork Reduction Act covers these activities, which are currently approved by the Office of Management and Budget under control number 1810–0581 (expires April 30, 2012).

The U.S. Department of Education (ED) has invited each SEA to request flexibility on behalf of itself, its LEAs, and schools, in order to better focus on improving student academic achievement and increasing the quality of instruction (ESEA flexibility). As of April 17, 2012, 11 SEAs have had their ESEA flexibility requests approved, 27 SEAs' requests are pending, and 5 SEAs have indicated that they intend to request ESEA flexibility in September 2012. Of particular relevance to this collection is ED's expectation that, overall, ESEA flexibility will result in less burden on SEAs, LEAs, and schools compared with current law absent this flexibility. The burden estimate for this collection is therefore substantially lower than that of the currently approved collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04800. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Educational Agency Local Educational Agency, and School Data Collection and Reporting under the Elementary and Secondary Education Act of 1965 (ESEA), Title I, Part A.

OMB Control Number: 1810–0581.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 50,719.

Total Estimated Number of Annual Burden Hours: 4,710,525.

Abstract: Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act, and its regulations contain several existing provisions that require State educational agencies (SEAs), local educational agencies (LEAs), and schools to collect

and disseminate information. The Paperwork Reduction Act covers these activities, which are currently approved by the Office of Management and Budget under control number 1810–0581 (expires April 30, 2012).

The U.S. Department of Education (ED) has invited each SEA to request flexibility on behalf of itself, its LEAs, and schools, in order to better focus on improving student academic achievement and increasing the quality of instruction (ESEA flexibility). As of April 17, 2012, 11 SEAs have had their ESEA flexibility requests approved, 27 SEAs' requests are pending, and 5 SEAs have indicated that they intend to request ESEA flexibility in September 2012. Of particular relevance to this collection is ED's expectation that, overall, ESEA flexibility will result in less burden on SEAs, LEAs, and schools compared with current law absent this flexibility. The burden estimate for this collection is therefore substantially lower than that of the currently approved collection.

Dated: April 17, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9748 Filed 4–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application Deadline for Fiscal Year (FY) 2012; Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, CFDA: Number: 84.358A, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline for submission of fiscal year (FY) 2012 SRSA grant applications.

An eligible LEA that is required to submit an application must do so electronically by the deadline in this notice.

DATES:

Application Deadline: May 31, 2012, 4:30:00 p.m. Washington, DC time.

FOR FURTHER INFORMATION CONTACT: Eric Schulz, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W107, Washington, DC 20202. Telephone: (202) 401–0039 or by email: *reap@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Which LEAs are eligible for an award under the SRSA program?

An LEA (including a public charter school that is considered an LEA under State law) is eligible for an award under the SRSA program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b)(1) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics (NCES); or

(2) The Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

Note: The school locale codes are the locale codes determined on the basis of the NCES school code methodology in place on the date of enactment of section 6211(b) of the Elementary and Secondary Education Act of 1965, as amended.

Which eligible LEAs must submit an application to receive an FY 2012 SRSA grant award?

An eligible LEA must submit an application to receive an FY 2012 SRSA grant award if that LEA has never submitted an application for SRSA funds in any prior year.

All eligible LEAs that need to submit an application to receive an SRSA grant award in a given year are highlighted in yellow on the SRSA eligibility spreadsheets, which are posted annually on the SRSA program Web site at *www2.ed.gov/programs/reapsrsa/eligibility.html*.

Under the regulations in 34 CFR 75.104(a), the Secretary makes a grant only to an eligible party that submits an application. Given the limited purpose served by the application under the SRSA program, the Secretary considers the application requirement to be met if an LEA submitted an SRSA application for any prior year. In this circumstance, unless an LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that an LEA previously submitted to remain in effect for FY 2012 funding, and the LEA does not have to submit an additional application.

We intend to provide, by April 12, 2012, a list of LEAs eligible for FY 2012 funds on the Department's Web site at *http://www2.ed.gov/programs/reapsrsa/eligibility.html*. This Web site will indicate which eligible LEAs must submit an electronic application to the Department to receive an FY 2012 SRSA grant award, and which eligible LEAs are considered already to have met the application requirement.

Eligible LEAs that need to submit an application in order to receive FY 2012 SRSA funds must do so electronically by the deadline established in this notice.

Electronic Submission of Applications

An eligible LEA that is required to submit an application to receive FY 2012 SRSA funds must submit an electronic application by May 31, 2012, 4:30:00 p.m., Washington, DC time. If it submits its application after this deadline, the LEA will receive a grant award only to the extent that funds are available after the Department awards grants to other eligible LEAs under the program.

Submission of an electronic application involves the use of the Department's G5 System. You can access the electronic application for the SRSA Program at: *http://www.g5.gov*. When you access this site, you will receive specific instructions regarding the information to include in your application.

The hours of operation of the G5 Web site are 6 a.m. Monday until 9 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday (Washington, DC time). Please note that the system is unavailable after 8 p.m. on Sundays, and after 9 p.m. on Wednesdays for maintenance (Washington, DC time). Any modifications to these hours are posted on the G5 Web site.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer disc) on request to either program 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.

Program Authority: 20 U.S.C. 7345–7345b.

Dated: April 18, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–9746 Filed 4–20–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–11–000]

Commission Information Collection Activities (FERC–725); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725, Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards.

DATES: Comments on the collection of information are due June 22, 2012.

ADDRESSES: You may submit comments (identified by Docket No. IC12–11–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725 and Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards.

OMB Control No.: 1902–0225.

Type of Request: Three-year extension of the FERC–725 information collection requirements with no changes to the current reporting requirements. However, FERC is making adjustments to the burden estimates based on current information.

Abstract: The Commission uses the information collected under the requirements of FERC–725 [1] to implement the statutory provisions of Section 215 of the Federal Power Act (FPA).[2]

Section 215 of the FPA aids the Commission's efforts to strengthen the reliability of the interstate grid through the granting of new authority to provide for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO) and reviewed and approved by FERC.

On February 3, 2006, the Commission issued Order No.672 [3] certifying a single ERO [the North American Electric Reliability Corporation (NERC)], to oversee the reliability of the United States' portion of the interconnected North American Bulk-Power System, subject to Commission oversight. The ERO is responsible for developing and enforcing the mandatory Reliability Standards. The Reliability Standards apply to all users, owners and operators of the Bulk-Power System. The Commission has the authority to approve all ERO actions, to order the ERO to carry out its responsibilities under these statutory provisions, and (as appropriate) to enforce Reliability Standards.

The ERO can delegate its enforcement responsibilities to a Regional Entity. Delegation is effective only after the Commission approves the delegation agreement. A Regional Entity can also propose a Reliability Standard to the ERO for submission to the Commission for approval.

The FERC–725 contains the following information collection elements:

Self Assessment and ERO Application: The Commission requires the ERO to submit to FERC a performance assessment report every five years. Each of regional entity submits a performance assessment report to the ERO. Submitting an application to become an ERO is also part of this collection.[4]

Reliability Assessments: 18 CFR 39.11 requires the ERO to assess the reliability and adequacy of the Bulk-Power System in North America. Subsequently, the ERO must report to the Commission on its findings. Regional entities perform similar assessments within individual regions.

Reliability Compliance: Reliability Standards are mandatory and enforceable. In addition to the specific information collection requirements contained in each standard, there are general compliance, monitoring and enforcement information collection requirements imposed on applicable entities. Audits, spot checks, self-certifications, exception data submittals, violation reporting, and mitigation plan confirmation are included in this area.

Stakeholder Survey: The ERO used a stakeholder survey to solicit feedback from registered entities in preparation for its three year performance assessment. The Commission assumes that the ERO will perform another survey prior to the 2014 performance assessment.

Other Reporting: This category refers to all other reporting requirements imposed on the ERO or regional entities in order to comply with the Commission's regulations.

The Commission implements its responsibilities through the Code of Federal Regulations in 18 CFR part 39.

Type of Respondents: Electric reliability organization, regional entities, and registered entities.

[1] ''Electric Reliability Organization'' or ''ERO'' means the organization certified by the Commission the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

[2] Section 215 was added by the Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005) (codified at 42 U.S.C. 16451, *et seq.*)

[3] Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards ¶ 31,204 71 FR 8662 (2006) *Order on rehearing,* 71 FR 19,814 (2006), FERC Statutes and Regulations ¶ 31,212 (2006).

[4] The Commission does not expect any new ERO applications to be submitted in the next three years and is not including any burden for this requirement in the burden estimate.

Estimate of Annual Burden[5]*:* The Commission estimates the total public reporting burden for this information collection as:

FERC–725—CERTIFICATION OF THE ERO[4]; PROCEDURES FOR ELECTRIC RELIABILITY STANDARDS

Type of respondent	Type of reporting requirement[4]	Number of respondents (A)	Number of responses per respondent (B)[6]	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Electric Reliability Organization (ERO).	Self-Assessment		0.33	0.33	10,400	3,432
	Reliability Assessments		11	11	3,120	34,320
	Reliability Compliance		1	1	76,837	76,837
	Standards Development		1	1	51,834	51,834
	Other Reporting	1	1	1	2,080	2,080
Regional Entities	Self-Assessment		0.33	2.64	16,640	43,930
	Reliability Assessments		1	8	16,679	133,432
	Reliability Compliance		1	8	46,788	374,304
	Standards Development		1	8	*4,142	33,134
	Other Reporting	8	1	8	1,040	8,320
Registered Entities	Stakeholder Survey		0.33	537	4	2,148
	Reliability Compliance	1,627	1	1,627	*483	786,342
Subtotals:						
ERO	[7] N/A					168,503
Regional						593,120
Registered						788,490
Total		1,636	[7] N/A	[7] N/A	[7] N/A	1,550,113

* (Rounded)

The Commission derived the figures above using NERC's Business Plan and Budget Submissions,NERC's Compliance, Enforcement and Monitoring Plans, NERC's Performance Assessments, other information on NERC's Web site (*http://www.nerc.com/*), and internal FERC staff estimates. See the appendix for more details regarding the burden estimates.[8]

The total estimated annual cost burden to respondents is $115,655,020 ($15,128,199 + $46,121,011 + $54,405,810).

ERO Cost: 168,503 hours @ $89.78/hr = $15,128,199.

Regional Entity Cost: 593,120 hours @ $77.76/hr = $46,121,011.

Registered Entity Cost: 788,490 hours @ $69/hr = $54,405,810 .

The hourly cost figures are loaded (i.e. includes salary and other personnel costs). The Commission used NERC's 2012 Business Plan and internal FERC salary estimates for these cost figures.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9659 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–124–000]

East Cheyenne Gas Storage, LLC; Notice of Amendment

Take notice that on April 6, 2012, East Cheyenne Gas Storage, LLC (East Cheyenne), 10901 W. Toller Drive, Suite 200, Littleton, Colorado, 80127, filed in the captioned docket an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA), for an order amending the certificate of public convenience and necessity issued by the Commission in Docket No. CP10–34–000, as amended in Docket No. CP11–40–000. Specifically, East Cheyenne requests authorization to make certain changes to its certificated gas storage project, which relate primarily to the design and number of wells (injection/withdrawal and water disposal wells) to be used in the initial project development and the pipeline and other facilities necessary to service such wells, and to abandon two existing injection/withdrawal wells. East Cheyenne also requests authorization to increase the certificated cushion gas capacity of the West Peetz field, from 5.706 billion cubic feet (Bcf) to 10.822 Bcf, all as more fully set forth in the application which is on file with the Commission and opens to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[6] In all instances below where the number of responses per respondent is ''1'' the Commission acknowledges that actual number of responses varies and cannot be estimated clearly.

[7] N/A = not applicable.

[8] The appendix will not be published in the **Federal Register.** The appendix is available in FERC's eLibrary system under the notice issuance in Docket No. IC12–11–000.

assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to William A. Lang, President, East Cheyenne Gas Storage, LLC, 10370 Richmond Avenue, Suite 510, Houston, Texas 77042, by Telephone: (713) 403–6460 or Facsimile: (713) 403–6461.

East Cheyenne requests that the Commission grant the requested authorizations and related approvals prior to July 9, 2012. By issuing an order by this date, the Commission will facilitate East Cheyenne's efficient and timely development of storage capacity at its East Cheyenne Gas Storage Project. East Cheyenne states that it does not propose any change in the working gas capacity, injection rates or withdrawal rates authorized by the Commission in the original certificate order, as amended, in this Application.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 4, 2012.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9650 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–111–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Application

Take notice that on April 4, 2012, CenterPoint Energy Gas Transmission Company, LLC (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP12–111–000 an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, to abandon and remove the Tate Island compressor station in Johnson County, Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

CEGT proposes to abandon the Tate Island compressor station, which is located on CEGT's Line B in Johnson County. CEGT would remove two rented 400 horsepower (HP) Caterpillar G3412 reciprocating compressor units and associated auxiliary facilities. CEGT states that natural gas currently flows through Line B and is compressed at the Tate Island compressor station before flowing via Line B for further compression at CEGT's Piney compressor station in Pope County, Arkansas, for delivery into CEGT's Line J. CEGT also states that it has determined that it would be more cost effective to abandon the Tate Island compressor station and use the Piney compressor station for the necessary compression. CEGT further states that this rearrangement of compression facilities would create savings on monthly rental costs and not degrade service on CEGT's system. CEGT

estimates that it would cost $401,810 to abandon the Tate Island facilities.

Any questions regarding this application should be directed to Michele Willis, Manager, Regulatory & Compliance, CenterPoint Energy Gas Transmission Company, LLC, P.O. Box 21734, Shreveport, Louisiana 71151, or via telephone at (318) 429–3708.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on May 4, 2012.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9652 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–55–000]

SIG Energy, LLLP v. California Independent System Operator Corporation; Notice of Complaint

Take notice that on April 4, 2012, pursuant to section 206 of the Federal Energy Regulatory Commission's (Commission) Rules and Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), SIG Energy, LLLP (Complainant) filed a formal complaint against the California Independent System Operator Corporation (Respondent) alleging that the Respondent violated its open access transmission tariff (OATT) and the Respondent's determination of the settlement price for congestion revenue rights contracts at certain pricing nodes on certain dates in August 2011 resulted in unjust and unreasonable rates, in violation of the filed rate doctrine and the Respondent's OATT and related Business Practice Manuals.

The Complainant certifies that public version copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials and on the California Public Utilities Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 24, 2012.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9653 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–56–000]

Energy Spectrum, Inc. and Riverbay Corporation v. New York Independent System Operator; Notice of Complaint

Take notice that on April 12, 2012, pursuant to section 205 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Energy Spectrum, Inc. and Riverbay Corporation (Complainants) collectively filed a formal complaint against New York Independent System Operator (Respondent or NYISO) alleging that the Respondent violated the Federal Power Act, the Commission's orders and policies, and the NYISO's Market

Administration and Control Area Services Tariff as a result of NYISO's issuance of Technical Bulletin No. 217 on April 6, 2012. The Complainants contend that the technical bulletin prohibits participating sellers from including energy consumed from ''behind the meter'' generation eligible to participate in the NYISO's Special Case Resources Program.

The Complaints certify that copies of the complaint were served on the contacts for NYISO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 19, 2012.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9654 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–6–000]

Columbia Gas Transmission, LLC; Notice of Intent to Prepare an Environmental Assessment for the Planned Line MB Loop Extension Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line MB Loop [1] Extension (Line MB) involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Baltimore and Harford Counties, Maryland. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on May 16, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we [2] invite you to attend the public scoping meetings scheduled as follows:

Date and Time	Location
May 8, 2012, 7 p.m. EDT	Oregon Ridge Lodge, 13401 Beaver Dam Road, Cockeysville, MD 21030.
May 9, 2012, 7 p.m. EDT	Youth's Benefit Elementary School Cafeteria, 1901 Fallston Road, Fallston, MD 21047.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Columbia representatives will be present one hour before each meeting to describe their proposal, present maps, and answer questions. Interested groups and individuals are encouraged to attend the meetings and to present comments on the issues they believe should be addressed in the EA. A transcript of each meeting will be made so that your comments will be accurately recorded.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if Line MB is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Columbia plans to construct about 21.3 miles of 26-inch-diameter pipeline

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

in Baltimore and Harford Counties, Maryland to expand its existing natural gas transmission system. The new pipeline loop would primarily be installed within or adjacent to Columbia's existing rights-of-way.

The Line MB would consist of the following facilities:

- 21.3 miles of 26-inch-diameter pipeline;
- Install pipeline pig[3] receivers at the Owing Mills Meter Station and the Rutledge Compressor Station; and
- Install two mainline valves on its existing Line MA.

The general location of the project facilities is shown in appendix 1.[4]

Land Requirements for Construction

The Applicant is still in the planning phase for the project, and workspace requirements have not been finalized. However, construction of the planned facilities would disturb about 297.6 acres of land for the aboveground facilities and the pipeline. Following construction, Columbia would maintain about 129.6 acres of land for permanent operation of the project's facilities; the remaining areas would be restored and revert to former uses. Most of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Alternatives.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas. Alternatives are being considered along the proposed route between Garrison Forest Road and Shawan Road (Milepost 1.4 to 8.2) and between Mansel Drive and Joel Court (Milepost 5.0 to 6.0).

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's Pre-filing process. The purpose of the Pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our Pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. In addition, representatives from the FERC participated in public Open House meetings sponsored by Columbia in the project area in March 2012, to explain the environmental review process to interested stakeholders.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EA[5]. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Army Corps of Engineers has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues and alternatives that we think deserve attention based on a preliminary review of the proposed facilities, comments made to us at the Applicant's open houses, preliminary consultations with other agencies, and the environmental information provided by Columbia. This preliminary list of issues may change based on your comments and our analysis.

- Construction constraints;
- Impacts on residential communities; and
- Route alternatives.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects,

[3] A "pig" is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[4] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[6] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before May 16, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12–6–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *www.ferc.gov* under the link called ''*Documents and Filings.''* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the ''eFiling'' feature that is listed under the ''*Documents and Filings''* link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the link called ''*Sign up''* or ''*eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. In addition, this list includes those that may be affected by a proposed alternative. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-Filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: April 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9657 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14378–000]

Green River Energy BFD, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 29, 2012, Green River Energy BFD, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the U.S. Army Corps of Engineers' (Corps) Green River Lake Dam, located on the Green River in Taylor County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A bifurcation structure constructed at the end of the dam's outlet conduit; (2) a 30-foot-long, 72 inch-diameter steel penstock; (3) a powerhouse containing two turbine/generating units with a total capacity of 3.1 megawatts; (4) a 570-foot-long, 12.7-kilovolt (kV) transmission line. The proposed project would have an average annual generation of 17,651 megawatt-hours (MWh), and operate utilizing surplus water from the Green River Lake Dam, as directed by the Corps.

Applicant Contact: Mr. Mark Boumansour, Green River Energy BFD, LLC, 1035 Pearl Street 4th Floor, Boulder, CO 80302. (720) 295–3317.

FERC Contact: Christiane Casey, *christiane.casey@ferc.gov,* (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications

(without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14378–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9649 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 13272–003]

Alaska Village Electric Cooperative; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 13, 2012, Alaska Village Electric Cooperative (AVEC) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Old Harbor Hydroelectric Project (Old Harbor Project or project) to be located on the East Fork of Mountain Creek (a Lagoon Creek tributary), near the town of Old Harbor, Kodiak Island Borough, Alaska. The project would cross federal lands of the Kodiak National Wildlife Refuge. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed run-of-river project would consist of an intake, penstock, powerhouse, tailrace and constructed channel, access road and trail, and transmission line. Power from this project would be used by the residents of the city of Old Harbor.

Intake

The intake would consist of a diversion/cut off weir with a height ranging from about 4 feet at the spillway to 6 feet elsewhere and having an overall length of approximately 100 feet. The creek bottom is close to bedrock so the base of the diversion wall would be a shallow grouted or concrete footing dug into the stream bed. The weir would not create any significant impoundment of water and would only be high enough to have an intake that pulls water from the midpoint of the water column. This would allow floatable objects and bottom moving sediments to remain in the creek. A water filtering system consisting of a trash rack, diversion gates, and secondary screens would be incorporated into the weir structure as a separate desanding box that would be partially exposed above grade. The project diversion and intake works would consist of concrete, or other suitable material, with an integral spillway. A below grade transition with an above ground air relief inlet pipe would convey water to a buried High Density Polyethylene Pipe (HDPE) pipeline.

Penstock

A 10,100-foot-long penstock consisting of an 18-inch-diameter HDPE pipe, a 20-inch-diameter HDPE pipe, and a 16-inch-diameter steel pipe would be installed. A total of 7,250 feet of HDPE would be installed from the intake and 2,850 feet of steel pipe would be installed near the powerhouse. The pipe would be buried 1 to 3 feet underground and follow the natural terrain as much as possible. The pipeline would be located such that bends would be gradual while minimizing the amount of excavation and fill needed.

Powerhouse

The powerhouse would consist of a 30-foot by 35-foot (approximate) by 16-foot-high metal building or similar structure. The building would house the turbines and associated equipment, switchgear, controls, and tools and would be placed on a fill pad. The power generation equipment would consist of two Pelton 262 kilowatt (kW) units with a 480-volt, 3-phase synchronous generator and switchgear for each unit. Each unit would have a hydraulic capacity of 5.9 cubic feet per second (cfs) for a total project peak flow rate of 11.8 cfs capable of producing 525 kW of power. A bypass flow system for maintaining environmental flows is not proposed at this time, since the source creek runs dry during certain times of the year.

Tailrace

A tailrace structure and constructed channel would convey the project flows approximately 700 feet from the powerhouse to the nearby lake, known in the city of Old Harbor as the Swimming Pond. A culvert would contain some of the tailrace near the powerhouse to allow for vehicle travel over the tailrace. The constructed channel would convey project flows 1,100 feet from the Swimming Pond to the headwaters of the Lagoon Creek tributary.

Access Road and Trail

An approximately 11,200-foot-long intake access trail would run between the intake and the powerhouse following the penstock route. The 12-foot-wide trail would be made of 1 to 2 feet of rock fill placed over a geo-textile filter fabric. Two gates would be placed along on the access trail to block the public from accessing the Kodiak National Wildlife Refuge on all terrain vehicles. One gate would be located at the powerhouse. Another gate would be placed where an existing trail connects to the new trail at about 7,000 feet northwest of the powerhouse. A new 6,800-foot-long by 24-foot-wide powerhouse access road would extend from powerhouse to the existing community drinking water tank access road. The road would be open to the public.

Transmission Line

A 6,800-foot-long (1.5-mile), 7.2-kV, 3-phase overhead power line would be installed from the powerhouse to the existing power distribution system in Old Harbor. The transmission line

would follow the powerhouse access road and drinking water tank road alignment.

The estimated dependable capacity of the project is 140 kW. The peak installed capacity will primarily depend on economics and the projected increase in demand. AVEC has chosen to permit the project with a peak capacity of 525 kW.

Applicant Contact: Brent Petrie; Manager, Community Development and Key Accounts; Alaska Village Electric Cooperative; 4831 Eagle Street, Anchorage, Alaska 99503–7497; (907) 565–5358 or email at *bpetrie@avec.org.*

FERC Contact: Carolyn Templeton; (202) 502–8785 or *carolyn.templeton@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13272) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9656 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

Mississippi 8 Hydro, LLC.	Project No. 13010–002.
FFP Project 98, LLC.	Project No. 14272–000.

The Commission has received two preliminary permit applications deemed filed on September 1, 2011, at 8:30 a.m.,[1] for proposed projects to be located at the U.S. Army Corps of Engineers' Mississippi River Lock and Dam No. 8 on the Mississippi River, in Houston County, Minnesota, and Vernon County, Wisconsin. The applications were filed by Mississippi 8 Hydro, LLC for Project No. 13010 and FFP Project 98, LLC for Project No. 14272.

On April 23, 2012, at 1 p.m. (Eastern Time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice. The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[2] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First Street NE., Washington, DC 20426. The Secretary will issue a subsequent notice announcing the results of the drawing.

Dated: April 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9661 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–115–000]

Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on April 5, 2012, Trunkline Gas Company, LLC (Trunkline), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP12–115–000, a Request for Authorization Under Blanket Certificate Prior Notice Procedures pursuant to sections 157.205, 157.208(b), 157.213(b) and 157.216(b)(2) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to abandon thirteen injection/withdrawal (I/W) wells, convert three I/W wells to observation wells and abandon two compressor units, all located in West and East Carroll Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Stephen Veatch, Senior Director of Certificates & Tariffs, Trunkline Gas Company, LLC, 5051 Westheimer Road, Houston, Texas 77056; at telephone (713) 989–2024, facsimile (713) 989–1158, or email: *stephen.veatch@sug.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2)(2011).

[2] 18 CFR 4.37 (2011).

documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: April 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9658 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–101–000]

Carolina Gas Transmission Corporation; Notice of Request Under Blanket Authorization

Take notice that on April 3, 2012 Carolina Gas Transmission Corporation (Carolina Gas), 601 Old Taylor Road, Cayce, South Carolina, 29033, filed in the above Docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), for authorization to replace approximately 7.6 miles of Carolina Gas existing Line 1 within the existing easement in Aiken Country, South Carolina, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Carolina Gas proposes to replace two segments of the existing 16-inch-diameter natural gas pipeline Line 1 for a total of 7.6 miles, within the existing right of way. Carolina Gas states that the estimated cost of the project is $15,005,105.

Any questions concerning this application may be directed to Randy D. Traylor, Jr., Manager-System Planning, Carolina Gas Transmission Corporation, 601 Old Taylor Road, Cayce, South Carolina 29033 at (803) 217–2255, or by email at *dtraylor@scana.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9651 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revocation of Market-Based Rate Authority and Termination of Market-Based Rate Tariffs

	Docket Nos.
Aleph One, Inc.	ER04–686–000
Alpha Domestic Power Trading, LLC	ER08–14–000
American Power Exchange, Inc.	ER94–1578–000
CBA Endeavors, LLC	ER08–996–000
Cesarie, Inc.	ER10–397–000
Coburn Energy, LLC	ER08–1523–000
Community Power & Utility	ER10–1466–000
Consulting Gasca & Associates, LLC	ER10–899–000
Eastland Power, LLC	ER08–665–000
Ebersen, Inc.	ER03–1330–000
EnergyWindow, Inc.	ER04–584–000
Green Energy Partners, LLC	ER08–1211–000
Innovative Technical Services, LLC	ER03–763–000
Inupiat Energy Marketing, LLC	ER09–1748–000
Kohler Co.	ER95–1018–000
KRK Energy	ER05–713–000
Lafarge Midwest, Inc.	ER09–1146–000
Luna Energy Investments, LLC	ER08–859–000
Matched LLC	ER10–719–000
Mid-Power Service Corporation	ER97–4257–000
Olde Towne Energy Associates, LLC	ER04–942–000
P&T Power Company	ER97–18–000
Quiet Light Trading, LLC	ER05–51–000
Redwood Energy Marketing, LLC	ER04–545–000
SF Phosphates Limited Company, LLC	ER01–1121–000
Sirius Investment Management, Inc.	ER05–71–000
Smart One Energy, LLC	ER10–2943–000
Tallgrass Energy Partners	ER08–679–000
Telemagine, Inc.	ER05–419–000

	Docket Nos.
Verde Renewable Energy, Inc.	ER07–48–000
Vesta Capital Partners LP	ER05–1434–000
Vesta Trading LP	ER05–939–000
Vickers Power, LLC	ER09–498–000
Walden Energy, LLC	ER05–66–000
Yaka Energy, LLC	ER05–1194–000

On January 20, 2012, the Commission issued an order announcing its intent to revoke the market-based rate authority of the public utilities listed in the caption of that order, which had failed to file baseline tariffs.[1] The Commission provided the utilities 60 days in which to file their baseline tariffs in accordance with Order No. 714 [2] or face revocation of their market-based rate authority.

In Order No. 714, the Commission explained that in order for the Commission and the public to obtain a complete picture of a company's tariff, the various provisions need to be integrated into a single system that will provide information as to the status of tariff provisions, permit the assembly of a complete tariff, and permit tariff-related research.[3] Further, the Commission explained that the standards being adopted in Order No. 714 merely replace the former paper system database with a very similar electronic database that will track tariff submissions and tariff history, but in a form that will make tariff information more widely available over the Internet. The Commission stated that ''the database will provide easier access to tariffs and allow the viewing of proposed tariff sections in context.'' [4] To implement such a database, the Commission required each regulated entity to make a filing to establish its baseline tariffs and ''because eTariff is a database system with no existing records, the baseline tariff needs to reflect the tariff as accepted by the Commission.'' [5] In *Electronic Tariff Filings,* the Commission clarified that companies had until September 30, 2010 to submit their baseline filings.[6]

In the January 20 Order, the Commission directed the public utilities listed in the caption of that order to file the required baseline tariffs within 60 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.[7]

The time period for compliance with the January 20 Order has elapsed. The 35 companies identified above have failed to file their delinquent baseline tariffs.

The Commission hereby revokes the market-based rate authority and terminates the electric market-based rate tariffs of the above-captioned public utilities.

Dated: April 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9655 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Acacia Energy, Inc.,* 138 FERC ¶ 61,046 (2012) (January 20 Order).

[2] *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[3] *Id.* P 10.

[4] *Id.* P 11.

[5] *Id.* P 100.

[6] 130 FERC ¶ 61,228, at P 6 (2010).

[7] January 20 Order at Ordering Paragraph.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee and Board of Directors Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC) and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Renaissance Oklahoma City, 10 North Broadway Avenue, Oklahoma City, OK 73102. The hotel phone number is (800) 468–3571.

SPP RE

April 23, 2012 (8 a.m.–12 p.m.)

SPP RSC

April 23, 2012 (1 p.m.–5 p.m.)

SPP Board of Directors

April 24, 2012 (8 a.m.–3 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*

Docket No. ER08–1419, *Southwest Power Pool, Inc.*

Docket No. ER09–659, *Southwest Power Pool, Inc.*

Docket No. ER09–1050, *Southwest Power Pool, Inc.*

Docket No. ER10–941, *Southwest Power Pool, Inc.*

Docket No. ER11–4105, *Southwest Power Pool, Inc.*

Docket No. ER12–140. *Southwest Power Pool, Inc.*

Docket No. ER12–430, *Southwest Power Pool, Inc.*

Docket No. ER12–550, *Southwest Power Pool, Inc.*

Docket No. ER12–891, *Southwest Power Pool, Inc.*

Docket No. ER12–1017, *Southwest Power Pool, Inc.*

Docket No. ER12–1018, *Southwest Power Pool, Inc.*

Docket No. ER12–1179, *Southwest Power Pool, Inc.*

Docket No. ER12–1401, *Southwest Power Pool, Inc.*

Docket No. ER12–1402, *Southwest Power Pool, Inc.*

Docket No. EL12–2, *Southwest Power Pool, Inc.*

Docket No. EL12–47, *Southwest Power Pool, Inc.*

Docket No. ER11–3728, *Midwest Independent System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent System Operator, Inc.*

Docket No. EL11–34, *Midwest Independent System Operator, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: April 16, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9660 Filed 4–20–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9663–7]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Consolidated Environmental Management, Inc.—Nucor Steel Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to citizen petitions asking EPA to object to operating permits (Permit No. 2560–0028–V0, Permit No. 3086–V0, and Permit No. 2560–0028–V1) issued by the Louisiana Department of Environmental Quality (LDEQ). Specifically, the Administrator has granted the June 25, 2010 and May 3, 2011 petitions, submitted by Zen-Noh Grain Corporation (''Zen-Noh'' or ''Petitioner'') to object to the May 24, 2010 and January 27, 2011, operating permits issued to Consolidated Environmental Management, Inc.—Nucor Steel Louisiana (''Nucor'') in Saint James Parish, Louisiana. Pursuant to sections 307(b) and 505(b)(2) of the Clean Air Act (CAA), a petition for judicial review of those parts of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notice appears in the **Federal Register**.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFROMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order for the Consolidated Environmental Management, Inc.—Nucor Steel Louisiana (''Nucor'') is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/nucor_steel_response_2012_zennoh.pdf*.

FOR FURTHER INFORMATION CONTACT: Dinesh Senghani at (214) 665–7221, email address: *senghani.dinesh@epa.gov* or the above EPA, Region 6 address.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issue arose after this period.

EPA received two petitions from the Petitioners dated June 25, 2010 and May 3, 2011, requesting that EPA object to the issuance of the Title V operating permits to Consolidated Environmental Management, Inc.—Nucor Steel Louisiana (''Nucor''), for the operation of the Pig Iron and Direct Reduced Iron (DRI) manufacturing facility in Saint James Parish, Louisiana for the following reasons:

In the 2010 Petition for the pig iron title V permit, the Petitioner makes the following claims: (1) The Best Achievable Control Technology (''BACT'') determinations are unsupported and inadequate under the Prevention of Significant Deterioration program (''PSD'') and Louisiana's State Implementation Plan (''SIP''); (2) LDEQ failed to require BACT for major sources of pollutants; (3) LDEQ failed to require reliable ambient air quality modeling to ensure that the facility's emissions will not cause an exceedance of a National Ambient Air Quality Standard (NAAQS) or PSD increment; (4) LDEQ unlawfully issued the permits without requiring preconstruction monitoring for particulate matter less than 10 microns (PM_{10}), sulfur dioxide (SO_2), hydrogen sulfide (H_2S), total reduced sulfur (TRS) and sulfuric acid mist; and (5) LDEQ unlawfully issued the pig iron PSD permit without providing the required opportunity for public participation in the decision-making process.

In the 2011 Petition for the modified title V pig iron permit and for the DRI title V permit, the Petitioner makes the following claims: (1) Permitting construction of the DRI process and pig iron process as separate projects unlawfully circumvents the requirements of PSD and the Louisiana SIP; (2) The ambient air quality analysis to demonstrate compliance with the nitrogen dioxide (''NO_2'') NAAQS unlawfully relied on the elimination of heat recovery steam generator (''HRSG'') bypass vents on the coke ovens and installation of selective catalytic reduction (''SCR'') control devices on pig iron emission units, even though these emission reductions are not federally enforceable; (3) Authorizing installation of SCR control devices by way of the modified pig iron title V permit violates PSD and the SIP because SCR will significantly increase emissions of sulfuric acid mist; (4) LDEQ violated PSD and the SIP by issuing the DRI permits without preconstruction ambient air quality monitoring; (5) The DRI permits violate PSD and the SIP because the DRI PSD permit does not include BACT determinations with specific emission limitations and compliance provisions; therefore, the DRI title V permit does not incorporate all applicable requirements; (6) LDEQ violated PSD and the SIP by issuing the DRI permits and the modified pig iron title V permit without a BACT emission limitation for particulate matter less than 2.5 microns ($PM_{2.5}$); and (7) the BACT determinations in the DRI PSD permit do not comply with the requirements of PSD and the SIP.

On March 23, 2012, the Administrator issued an order granting both petitions. The order explains the reasons behind EPA's conclusion to grant these petitions.

Dated: April 12, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–9728 Filed 4–20–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2012–3770, FRL–9663–8]

American Drum & Pallet, Memphis, Shelby County, TN; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the American Drum and Pallet Superfund Site located in Memphis, Shelby County, Tennessee for publication.

DATES: The Agency will consider public comments on the settlement until May 23, 2012. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. CERCLA–04–2012–3770 or Site name American Drum & Pallet Superfund Site by one of the following methods:

- *www.epa.gov/region4/superfund/programs/enforcement/enforcement.htm1.*
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 9, 2012.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2012–9696 Filed 4–20–12; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, April 25, 2012, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street NE., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes,
2. Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, and
3. Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, as amended.

CLOSED SESSION:

Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.

Note: In accordance with the Sunshine Act, the open session of the meeting will be open to public observation of the Commission's deliberations and voting. The remainder of the meeting will be closed. Any matter not discussed or concluded may be carried over to a later meeting.

For the open session, seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, *eeoc.gov.,* and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: April 18, 2012.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2012–9796 Filed 4–19–12; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required b y the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 23, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov <mailto:Nicholas_A._Fraser@omb.eop.gov>* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov <mailto:PRA@fcc.gov>.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1003.

Title: Communications Disaster Information Reporting System (DIRS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government, and state, local or tribal government.

Number of Respondents: 6,750 respondents; 6,750 responses.

Estimated Time per Response: 0.7 hours per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 218 and 303(r) of the Communications Act of 1934, as amended.

Total Annual Burden: 4,725 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission acknowledges and agrees that is consistent with the primary objective of the DIRS to treat filings as confidential. We will work with respondents to ensure that their concerns regarding the confidentiality of DIRS filings are resolved in a manner consistent with Commission rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as a revision during this comment period to obtain the three year clearance from them.

In response to the events of September 11, 2001, the Federal Communications Commission (Commission or FCC) created an Emergency Contact Information System to assist the Commission in ensuring rapid restoration of communications capabilities after disruption by a terrorist threat or attack, and to ensure that public safety, public health, and other emergency and defense personnel have effective communications services available to them in the immediate aftermath of any terrorist attack within the United States. The Commission submitted, and OMB approved, a collection through which key communications providers could voluntarily provide contact information.

The Commission's Public Safety and Homeland Security Bureau (PSHSB) updated the Emergency Contact Information system with a Disaster Information Reporting System (DIRS) that uses electronic forms to collect Emergency Contact Information forms and through which participants may inform the Commission of damage to communications infrastructure and facilities and may request resources for restoration. The Commission updated the process by increasing the number of reporting entities to ensure inclusion of wireless, wireline, broadcast, cable and satellite communications providers.

The Commission is now requesting revision of the currently approved collection. In recent years, communications have evolved from a circuit-switched network infrastructure to broadband networks. The Commission is seeking to extend the Disaster Information Reporting System to include interconnected Voice over Internet Protocol and broadband Internet Service Providers. Increasing numbers of consumers, businesses, and government agencies rely on broadband and interconnected VoIP services for everyday and emergency communications needs, including vital 9–1–1 services. It is therefore imperative that the Disaster Information Reporting System be expanded to include these new technologies in order for the Commission the gain an accurate picture of communications landscape during disasters. The Commission has revised its DIRS screen shots and is including a copy of the DIRS user manual for which the Commission is requesting OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–9700 Filed 4–20–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–425]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Ms. Gloria F. Harper's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against her. Ms. Harper, or any person who has an existing contract with or intends to contract with her to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554.

DATES: Opposition requests must be received by 30 days from the receipt of the suspension letter or May 23, 2012, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by phone at (202) 418–1697 or email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Acting Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Theresa.Cavanaugh@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 12–452, which was mailed to Ms. Harper and released on March 22, 2012. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554, In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com.*

Federal Communications Commission.

Theresa Z. Cavanaugh,

Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

March 22, 2012

DA 12–452

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL

Ms. Gloria F. Harper, c/o Ms. Cynthia Marie Cimino, Federal Public Defender, Hale Boggs Federal Building, 500 Poydras St., Room 318, New Orleans, LA 70130

Re: Notice of Suspension and Initiation of Debarment Proceeding File No. EB–12–IH–0400

Dear Ms. Harper: The Federal Communications Commission (Commission or FCC) has received notice of your guilty plea for conspiracy to defraud the United States in violation of 18 U.S.C. § 371 in connection with your participation in the federal schools and libraries universal service support mechanism (E-Rate program).[1]

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and

Consequently, pursuant to 47 C.F.R. § 54.8, this letter constitutes official notice of your suspension from the E-Rate program.[2] In addition, the Enforcement Bureau (Bureau) hereby notifies you that the Bureau will commence debarment proceedings against you.[3]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the [E-Rate program]'' from receiving the benefits associated with that program.[4] Schools may receive E-Rate program funding for eligible goods and services by filing application forms, seeking competitive bids, and selecting the most cost-effective vendor.[5] The E-Rate program rules require school applicants to pay a percentage of the total cost of eligible goods and services requested for funding.[6] The E-Rate program rules prohibit an E-Rate vendor or anyone associated with an E-Rate vendor from participating in the application process or vendor selection.[7]

On June 6, 2011, you pled guilty to knowingly and willfully orchestrating multiple fraudulent schemes and conspiring with others to defraud the E-Rate program through the submission of materially false and fraudulent documents, concealment of material facts, and obstruction and manipulation of the competitive bidding process involving schools and school districts located in six states.[8] You participated in the conspiracy as the owner of Computer Training and Associates (CTA) and co-owner of Global Networking Technologies, Inc. (GNT).[9] Specifically, from approximately December 2001 through September 2005, you and a co-conspirator violated E-Rate program rules by completing, submitting, and fraudulently signing E-Rate program applications (FCC Forms 470, 471, and 486) on behalf of school applicants.[10] You also conspired to bribe school officials in exchange for their ceding control of the schools' competitive bidding processes to your companies.[11] In further violation of the E-Rate rules, you promised school applicants that their required payments would be waived if they chose CTA or GNT as the schools' E-Rate service provider.[12] You also did not disclose your involvement in the application process or the promised waivers to the Universal Service Administrative Company.[13] CTA and GNT directly benefited from your fraudulent schemes by receiving approximately $4.5 million in E-Rate contracts.[14] These actions constitute the conduct or transactions upon which this suspension notice and proposed debarment are based.[15]

On February 9, 2012, the United States District Court for the Eastern District of Louisiana sentenced you to serve 30 months in prison followed by three years of supervised release for conspiring to defraud the federal E-Rate program in multiple states.[16] The court also ordered you to pay a $100 special assessment.[17]

Pursuant to Section 54.8(b) of the Commission's rules,[18] upon your conviction the Bureau is required to suspend you from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[19] Your suspension becomes effective upon receipt of this letter or publication of notice of the letter in the **Federal Register**, whichever comes first.[20]

In accordance with the Commission's suspension and debarment rules, you may contest this suspension or the scope of this suspension by filing arguments, with any relevant documents, within thirty (30) calendar days after receipt of this letter or after publication of notice of it in the **Federal Register**, whichever comes first.[21] Such requests, however, will not ordinarily be granted.[22] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[23] The Bureau will decide any request to reverse or modify a suspension within ninety (90)

subsequent sentencing for conspiracy to defraud the United States in *United States* v. *Gloria F. Harper,* Criminal Docket No. 2:10–cr–00326–CJB–ALC, Plea Agreement (E.D. La. filed June 2, 2011 and entered June 6, 2011) (*Plea Agreement*).

[2] 47 CFR 54.8.

[3] *Id.* 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the E-Rate program in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*Second Report and Order*) (adopting Section 54.521 to suspend and debar parties from the E-Rate program). In 2007 the Commission extended the debarment rules to apply to all federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, App. C at 16410–12 (2007) (*Program Management Order*) (renumbering Section 54.521 of the universal service debarment rules as Section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

[4] *Second Report and Order,* 118 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[5] 47 CFR 54.504, 54.511(c).

[6] *Id.* 54.505, 54.523.

[7] *See Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* CC Docket No. 96–45, Order, 16 FCC Rcd 4028, 4032–33 paras. 10–12 (2000) (*Mastermind Order*) (finding that when an applicant surrenders control of the bidding process to an employee of an entity that will also participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process); *see also* Universal Service Administrative Company's description of an Open and Fair Competitive Bidding Process at *http://www.universalservice.org/sl/applicants/step03/run-open-fair-competition.aspx.*

[8] *Plea Agreement* at 4–5. The conspiracy involved schools and school districts located throughout Arkansas, Florida, Illinois, Louisiana, North Dakota, and Texas. *See* Appendix.

[9] *See United States* v. *Gloria F. Harper,* Criminal Docket No. 2:10–cr–00326–CJB–ALC, *Factual Basis* at 2, 4 (E.D. La. filed June 2, 2011) (*Factual Basis*).

[10] *Id.*

[11] *Id.* at 3. These bribes included $28,500 in payments to school officials in Louisiana and Arkansas; a $79,382 payment to a school agent in Florida; and a $10,000 payment to a school agent in Illinois. *Id.* at 3–4.

[12] *Factual Basis* at 4; *see also United States* v. *Gloria F. Harper,* Criminal Docket No. 2:10–cr–00326–CJB–ALC, Information at 7 (E.D. La. filed Nov. 18, 2011).

[13] *Factual Basis* at 4.

[14] *Id.*

[15] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 C.F.R. § 54.8(e)(2)(i). The Bureau has already debarred two co-conspirators, Tyrone Pipkin and Barrett C. White, from participating in the E-Rate program. *See* Tyrone Pipkin, File No. EB–11–IH–1071, Notice of Debarment, 26 FCC Rcd 16822 (Enf. Bur. 2011); Barrett C. White, Notice of Debarment, 26 FCC Rcd 16047 (Enf. Bur. 2011); *see also* Justice News, Dep't of Justice, Former Owner of Illinois Technology Company Sentenced to Serve 30 Months in Prison for Role in Multi-State Scheme to Defraud Federal E-Rate Program, February 9, 2012, *athttp://www.justice.gov/opa/pr/2012/February/12-at-189.html.*

[16] *United States* v. *Gloria F. Harper,* Criminal Docket No. 2:10–cr–00326–CJB–ALC, after, Judgment at 2–3 (filed Feb. 9, 2012). The prison term will run concurrent with any sentence imposed in the Northern District of Illinois, Criminal Docket No. 11–479. *Id.* at 2.

[17] *Id.* at 5.

[18] 47 CFR 54.8(b); *see Second Report and Order,* 18 FCC Rcd at 9225–27, paras. 67–74.

[19] 47 CFR 54.8(a)(1), (d).

[20] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[21] 47 CFR 54.8(e)(4).

[22] *Id.*

[23] *Id.* 54.8(f).

calendar days of its receipt of such request.[24]

II. Initiation of Debarment Proceedings

As discussed above, your guilty plea and conviction of criminal conduct in connection with the E-Rate program is the basis for your immediate suspension from the program as well as a basis to commence debarment proceedings against you. Conviction of criminal fraud is cause for debarment as defined in Section 54.8(c) of the Commission's rules.[25] Therefore, pursuant to Section 54.8(b) of the rules, your conviction requires the Bureau to commence debarment proceedings against you.[26]

As with the suspension process, you may contest the proposed debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or publication of notice of it in the **Federal Register**, whichever comes first.[27] The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information you may have filed.[28] If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever comes first.[29]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the E-Rate program for three years from the date of debarment.[30] The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.[31]

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554, to the attention of Joy M. Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–A236, with a copy to Theresa Z. Cavanaugh, Acting Division Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C322, Federal Communications Commission. All messenger or hand delivery filings must be submitted without envelopes.[32] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Joy Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–A236, Washington, DC 20554, with a copy to Theresa Z. Cavanaugh, Acting Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–C322, Washington, DC 20554. You shall also transmit a copy of your response via email to Joy M. Ragsdale, *joy.ragsdale@fcc.gov* and to Theresa Z. Cavanaugh, *Theresa.Cavanaugh@fcc.gov.*

If you have any questions, please contact Ms. Ragsdale via U.S. postal mail, email, or by telephone at (202) 418–1697. You may contact me at (202) 418–1553 or at the email address noted above if Ms. Ragsdale is unavailable.

Sincerely yours,

Theresa Z. Cavanaugh,
Acting Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via email); Rashann Duvall, Universal Service Administrative Company (via email) Juan Rodriguez, Antitrust Division, United States Department of Justice (via email); Stephanie Toussaint, Antitrust Division, United States Department of Justice (via email)

[FR Doc. 2012–9626 Filed 4–20–12; 8:45 am]

BILLING CODE 6712–01–P

[24] *See Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[25] "Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism." 47 CFR 54.8(c). Associated activities "include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms." *Id.* 54.8(a)(1).

[26] *Id.* 54.8(b).

[27] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[28] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[29] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* 54.8(f).

[30] *Second Report and Order,* 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), (g).

[31] *Id.* 54.8(g).

[32] See *FCC Announces Change in Filing Location for Paper Documents,* Public Notice, 24 FCC Rcd 14312 (2009) for further filing instructions.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, 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 the renewal of an existing information collection, as required by the PRA. On February 6, 2012 (77 FR 5802), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Disclosure of Deposit Status. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before May 23, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy

of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Disclosure of Deposit Status.

OMB Number: 3064–0168.

Affected Public: Insured Depository Institutions.

Disclosures

A. Sweep account disclosures (section 360.8(e)):

Estimated Number of Respondents: 1,839.

Frequency of Response: on occasion (average of once per year per bank).

Average Time per Response: 2 hours.

Estimated Annual Burden: 3,678 hours.

B. Disclosure of action affecting deposit insurance coverage (section 330.16(c)(3)):

Estimated Number of Respondents: 7,357.

Frequency of Response: once.

Average Time per Response: 4 hours.

Estimated Annual Burden: 29,428 hours.

Total Annual Burden: 33,106 hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 18th day of April 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–9710 Filed 4–20–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 22, 2012.

ADDRESSES: You may submit comments, identified by *FR 2230* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include OMB number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays. Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829) Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Suspicious Activity Report by Depository Institutions.

Agency form number: FR 2230.

OMB Control number: 7100–0212.

Frequency: On occasion.[1]

Reporters: State member banks, bank holding companies and their nonbank subsidiaries, Edge and agreement corporations, and the U.S. branches and agencies, representative offices, and nonbank subsidiaries of foreign banks supervised by the Federal Reserve.

Annual reporting hours: 90,397 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 6,000.

General description of report: The Suspicious Activity Report by Depository Institutions (SAR) is mandatory, pursuant to authority contained in the following statutes: 12 U.S.C. 248(a)(1), 625, 1844(c), 3105(c)(2), 3106(a), and 1818(s). SARs are exempt from Freedom of Information Act (FOIA) disclosure by 31 U.S.C. 5319 and FIOA exemption 3 which incorporates into the FOIA certain nondisclosure provisions that are contained in other federal statutes, 5 U.S.C. 552 (b)(3), by FOIA exemption 7, which generally exempts from public disclosure ''records or information compiled for law enforcement purposes,'' 5 U.S.C. 552 (b)(7), and by exemption 8, 5 U.S.C. 552 (b)(8), which exempts information ''contained in or related to examination, operating, or condition reports,'' prepared for the use of financial institution supervisory agencies. Additionally, pursuant to 31 U.S.C. 5318(g), officers and employees of the Federal government are generally forbidden from disclosing the contents of a SAR, or even acknowledging that a SAR exists, to a party involved in a transaction that is the subject of a SAR. Finally, information contained in SARs may be exempt from certain disclosure and other requirements of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

Abstract: Since 1996, the federal banking agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration) and the Department of the Treasury's Financial Crimes Enforcement Network have required certain types of financial institutions to report known or suspected violations of law and suspicious transactions. To fulfill these requirements, supervised banking organizations file SARs. Law enforcement agencies use the information submitted on the reporting form to initiate investigations and the Federal Reserve uses the information in the examination and oversight of supervised institutions.

Board of Governors of the Federal Reserve System, April 17, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9644 Filed 4–20–12; 8:45 am]

BILLING CODE 6210–01–P

[1] Between October 1, 2010, and September 30, 2011, 6,000 state member banks, bank holding companies, Edge and agreement corporations, and U.S. branches and agencies, representative offices, and nonbank subsidiaries of foreign banks filed 90,397 suspicious activity report, generating an annual frequency of 15.0661for each institution.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: The Children's Health Insurance Program Reauthorization Act (CHIPRA) Express Lane Eligibility (ELE) Evaluation—OMB No. 0990–NEW—Assistant Secretary Planning and Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting the Office of Management and Budget (OMB) approval on a new collection to evaluate the implementation of a new policy known as Express Lane Eligibility (ELE). With ELE, a state's Medicaid and/or Children's Health Insurance Program (CHIP) can rely on another agency's eligibility findings to qualify children for health coverage, despite their different methods of assessing income or otherwise determining eligibility.

CHIPRA authorized an extensive, rigorous evaluation of ELE, creating an exceptional opportunity to document ELE implementation across states and to assess the changes to coverage or administrative costs that may have resulted. The evaluation also provides an opportunity to understand other methods of simplified enrollment that states have been pursuing and to assess the benefits and potential costs of these methods compared to those of ELE. To answer key research questions, ASPE will draw on 5 primary data collections including (1) Collecting administrative cost data from ELE and non-ELE states, (2) collecting enrollment data from ELE and non-ELE states, (3) conducting case studies in ELE and non-ELE states, including key informant interviews and focus groups, (4) conducting a 51-state (50 states and the District of Columbia) survey, and (5) holding quarterly monitoring calls with 30 states. This request seeks clearance on all data collections except the collection of administrative cost and enrollment data for ELE states.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Administrative Cost Discussion Guide (Attachment B).	Key informants	18	1	1.5	27
Enrollment Extraction Form (Attachment C).	State-level computer programmers	6	1	40	240
ELE Case Study Protocol (Attachment D1).	Key informants (ELE states—state- and local-levels).	120	1	1	120
Non-ELE Case Study Protocol (Attachment D2).	Key informants (non-ELE states—state- and local-levels).	90	1	1	90
Moderator's Guide (Attachments E1 and E2).	Focus group participants (2 focus groups in 8 ELE states and 2 focus groups in 4 non-ELE states = 24 focus groups).	240	1	1.5	360
51–State Survey (Attachment F)	Medicaid and CHIP officials	51	1	45/60	38
Quarterly Interview Protocol (Attachment G).	Key informants (quarterly monitoring calls).	30	5	30/60	75
Total					950

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2012–9703 Filed 4–20–12; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Teleconference

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Teleconference.

Time and Date: 10 a.m.–11 a.m. (EST); May 4, 2012.

Place: This conference call is scheduled to begin at 10 a.m. Eastern Daylight Time. To participate in the teleconference, please dial 888–989–6416 and enter conference code 3278627, which will connect you to the call.

Status: Open, however teleconference access limited only by availability of telephone ports.

Purpose: The NCVHS has been named in the Patient Protection and Affordable Care Act (ACA) of 2010 to review and make recommendations on standards and operating rules for the following HIPAA transactions: Health care claims, enrollment/disenrollment, premium payment, prior authorization for referrals, and claim attachments This meeting will support these activities in the development of a set of recommendations for the Secretary, as required by § 1104 of the ACA.

Contact Person for More Information: Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245 or Lorraine Doo, lead staff for the Standards Subcommittee, NCVHS, Centers for Medicare and Medicaid Services, Office of E–Health Standards and Services, 7500 Security Boulevard, Baltimore, Maryland 21244, telephone (410) 786–6597. Program information as well as summaries of meetings and a roster of committee members is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: April 16, 2012.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–9614 Filed 4–20–12; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day 12–0134]

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) 639–7570 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

Foreign Quarantine Regulations (42 CFR 71) (OMB Control No. 0920–0134 expires 6/30/12)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 361 of the Public Health Service Act (PHSA)(42 U.S.C. 264) authorizes the Secretary of Health and Human Services (HHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases into the United States. Legislation and existing regulations governing the foreign quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents entering the United States from foreign ports in order to protect the public's health.

Under the foreign quarantine regulations, the master of a ship or captain of an airplane entering the United States from a foreign port is required by public health law to report certain illnesses among passengers (42 CFR 71.21 (b)). In addition to the aforementioned list of illnesses which must be reported to CDC, the master of a ship or captain of an airplane must also report (1) Hemorrhagic Fever

Syndrome (persistent fever accompanied by abnormal bleeding from any site); or (2) acute respiratory syndrome (severe cough or severe respiratory disease of less than 3 weeks in duration); or (3) acute onset of fever and severe headache, accompanied by stiff neck or change in level of consciousness. CDC has the authority to collect personal health information to protect the health of the public under the authority of section 301 of the Public Health Service Act (42 U.S.C.).

This information collection request also includes the Passenger Locator Information Form. The Passenger Locator Information Form is used to collect reliable information that assists quarantine officers in locating, in a timely manner, those passengers and crew who are exposed to communicable diseases of public health significance while traveling on a conveyance. HHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to the Public Health Service when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Small revisions are being requested as part of this package. A modification of format to the Passenger Locator Form (PLF) is requested in this Supporting Statement to account for a change in the scanning software used for the PLF. No change in content is requested. The content will remain identical to the version approved by OMB on 10/28/11.

Changes to the data collection related to the confinement of dogs upon arrival to the United States are also requested. The CDC form 75.37, ''Notice of Importers of Dogs'' will now be identified as CDC form 75.37 ''NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement.'' The form has been changed to enhance clarity around the purpose of the form, including: the type of data required, the regulatory requirements the form is meeting, the responsibilities of the importer, whether or not the animal has received a booster rabies vaccine, and the responsibility of the government agent in ensuring that the form is complete.

Respondents to this data collection include airline pilots, ships' captains, importers, and travelers. The nature of the quarantine response dictates which forms are completed by whom. There are no costs to respondents except for their time to complete the forms.

Estimated Annualized Burden Hour: 227,330 hours.

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Maritime conveyance operators	71.21(a) Radio Report of death/illness—illness reports from ships.	2000	1	2/60
Aircraft commander or operators	71.21(b) Death/Illness reports from aircrafts	1700	1	2/60
Maritime conveyance operators	71.21(c) Gastrointestinal Illnesses reports 24 and 4 hours before arrival (VSP).	17000	1	3/60
Maritime conveyance operators	71.21(c) Recordkeeping—Medical logs	17000	1	3/60
Isolated or Quarantined individuals	71.33(c) Report by persons in isolation or surveillance.	11	1	3/60
Maritime conveyance operators	71.35 Report of death/illness during stay in port.	5	1	30/60
Aircraft commander or operators	Locator Form used in an outbreak of public health significance.	2,700,000	1	5/60
Aircraft commander or operators	Locator Form used for reporting of an ill passenger(s).	800	1	5/60
Importer	71.51(b)(2) Dogs/cats: Certification of Confinement, Vaccination.	2000	1	10/60
Importer	71.51(b)(3) Dogs/cats: Record of sickness or deaths.	20	1	15/60
Importer	71.52(d) Turtle Importation Permits	5	1	30/60
Non-Human Primate Importer	71.53(d) Importer Registration—Nonhuman Primates.	40	1	10/60
Non-Human Primate Importer	71.53(e) Recordkeeping	30	4	30/60
Importers	71.55 Dead bodies	5	1	1
Importer	71.56(a)(2) African Rodents—Request for exemption.	20	1	1
Importer	71.56(a)(iii) Appeal	2	1	1

Dated: April 17, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–9721 Filed 4–20–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12II]

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 404–639–7570 and send comments to Ron Otten, at CDC 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

Risk Factors for Invasive Methicillin-resistant *Staphylococcus aureus* (MRSA) among Patients Recently Discharged from Acute Care Hospitals through the Active Bacterial Core Surveillance for Invasive MRSA infections (ABCs MRSA)—NEW—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Preventing healthcare-associated invasive MRSA infections is one of CDC's priorities. The goal of this project is to assess risk factors for invasive healthcare-associated MRSA infections, which will inform the development of targeted prevention measures. This activity supports the HHS Action Plan for elimination of healthcare-associated infections.

Essential steps in reducing the occurrence of healthcare-associated invasive MRSA infections are to quantify the burden and to identify modifiable risk factors associated with invasive MRSA disease. CDC's current ABCs MRSA surveillance has been essential to quantify the burden of invasive MRSA in the United States. Through this surveillance, CDC was able to estimate that 94,360 invasive MRSA infections associated with 18,650 deaths occurred in the United States in 2005. The majority of these invasive infections (58%) had onset in the community or within three days of hospital admission and occurred among individuals with recent healthcare exposures (healthcare-associated community-onset [HACO]). More recent data from the CDC's ABCs MRSA system have shown that two-thirds of invasive HACO MRSA infections occur among persons who are discharged from an acute care hospital in the prior three months. Risk factors for invasive MRSA infections post-discharge have not been well evaluated, and effective prevention measures in this population remain uncertain.

For this project, an estimated total of 450 patients (150 patients with HACO MRSA infection post-acute care discharge and 300 patients without HACO MRSA infection) will be contacted for the MRSA interview annually. This estimate is based on the numbers of MRSA cases reported by the ABCs MRSA sites annually (*http://www.cdc.gov/abcs/reports-findings/survreports/mrsa08.html*) who are 18 years of age or older, had onset of the MRSA infection in the community or within three days of hospital admission, and history of hospitalization in the prior three months. ABCs MRSA surveillance case report forms will be used to identify HACO MRSA cases to be contacted for a telephone interview. For each HACO MRSA case identified; two patients without HACO MRSA infection (control-patients) matched on age with MRSA case will be contacted for a health interview. All 450 patients (both cases and controls) will be screened for eligibility and those considered to be eligible will complete the telephone interview. We anticipate that 350 of the 450 patients screened will complete the telephone interview across all six participating ABCs MRSA sites per year. We anticipate the screening questions to take about 5 minutes and the telephone interview 20 minutes per respondent.

There are no costs to respondents. The total response burden for the study is estimated as follows:

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Hospital Patients	Screening Form	450	1	5/60	38
	Telephone interview	350	1	20/60	117
Total					155

Dated: April 17, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–9720 Filed 4–20–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0821]

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 404–639–7570 and send comments to Ron Otten, at CDC, 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

Quarantine Station Illness and Death Investigation Forms—Airline, Maritime, Land/Border Crossing Illness and Death Investigation Forms—Revision—National Center for Zoonotic and Emerging Infectious Diseases (NCEZID) (0920–0821, expires 9/30/2012), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a revision to an existing data collection of patient-level clinical, epidemiologic, and demographic data from ill travelers and their possible contacts in order to fulfill its regulatory responsibility to prevent the importation of communicable diseases from foreign countries (42 CFR part 71) and interstate control of communicable diseases in humans (42 CFR part 70).

Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States. The regulations that implement this law, 42 CFR parts 70 and 71, authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances (*e.g.,* airplanes, cruise ships, trucks, *etc.*), persons, and shipments of animals and etiologic agents in order to protect the public's health. The regulations also require conveyances to immediately report an ''ill person'' or any death on board to the Quarantine Station prior to arrival in the United States. An ''ill person'' is defined in statute by:

—Fever (≥100 °F or 38 °C) persisting ≥48 hours
—Fever (≥100 °F or 38 °C) AND rash, glandular swelling, or jaundice
—Diarrhea (≥3 stools in 24 hours or greater than normal amount)

The 2003 Severe Acute Respiratory Syndrome (SARS) situation and concern about pandemic influenza and other communicable diseases have prompted CDC Quarantine Stations to recommend that all illnesses be reported prior to arrival.

CDC Quarantine Stations are currently located at 20 international U.S. Ports of Entry. When a suspected illness is reported to the Quarantine Station, officers promptly respond to this report by meeting the incoming conveyance in person (when possible), collecting information and evaluating the patient(s), and determining whether an ill person can safely be admitted into the U.S. If Quarantine Station staff is unable to meet the conveyance, the crew or medical staff of the conveyance is trained to complete the required documentation and forward it (using a secure system) to the Quarantine Station for review and follow-up.

To perform these tasks in a streamlined manner and ensure that all relevant information is collected in the most efficient and timely manner possible, Quarantine Stations use a number of forms—the Air Travel Illness or Death Investigation Form, Maritime Conveyance Illness or Death Investigation Form, and the Land Travel Illness or Death Investigation Form—to collect data on passengers with suspected illness and other travelers/crew who may have been exposed to an illness. These forms are also used to respond to a report of a death aboard a conveyance.

The purpose of all three forms is the same: to collect information that helps quarantine officials detect and respond to potential public health communicable disease threats. All three forms collect the following categories of information: Demographics and mode of transportation, clinical and medical history, and any other relevant facts (*e.g.,* travel history, traveling companions, *etc.*). As part of this documentation, quarantine public health officers look for specific signs and symptoms common to the nine quarantinable diseases (Pandemic influenza; SARS; Cholera; Plague; Diphtheria; Infectious Tuberculosis; Smallpox; Yellow fever; and Viral Hemorrhagic Fevers), as well as most communicable diseases in general. These signs and symptoms include fever, difficulty breathing, shortness of breath, cough, diarrhea, jaundice, or signs of a neurological infection. The forms also collect data specific to the traveler's conveyance.

These data are used by Quarantine Stations to make decisions about a passenger's suspected illness as well as its communicability. This in turn enables Quarantine Station staff to assist conveyances in the public health management of passengers and crew.

The estimated total burden on the public, included in the chart below, can vary a great deal depending on the severity of the illness being reported, the number of contacts, the number of follow-up inquiries required, and who is recording the information (*e.g.,* Quarantine Station staff versus the conveyance medical authority). In all cases, Quarantine Stations have implemented practices and procedures that balance the health and safety of the American public against the public's desire for minimal interference with their travel and trade. Whenever possible, Quarantine Station staff obtain information from other documentation (*e.g.,* manifest order, other airline documents) to reduce the amount of the public burden.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents (2009, incl. H1N1)	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
Airline Travel Illness or Death Investigation Form	1626	1	5/60	136
Maritime Conveyance Illness or Death Investigation Form	1873	1	7/60	219
Land Travel Illness or Death Investigation Form	259	1	5/60	22
Total	3,758			377

Dated: April 17, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–9717 Filed 4–20–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Enhancing Substance Abuse Treatment Services To Address Hepatitis Infection Among Intravenous Drug Users Hepatitis Testing and Vaccine Tracking Form (OMB No. 0930–0300)—Extension

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center Substance Abuse Treatment (CSAT), is responsible for the Hepatitis Testing and Vaccine Tracking Form for the prevention of Viral Hepatitis in patients in designated Opioid Treatment Programs (OTPs). There are no changes to the form or added burden.

This form allows SAMHSA/CSAT to collect essential Clinical information that will be used for quality assurance, quality performance and product monitoring on approximately 264 Rapid Hepatitis C Test kits and 10,628 doses of hepatitis vaccine (Twinrix, HAV, or HBV). The above kits and vaccines will be provided to designated OTPs serving the minority population in their communities. The information collected on the Form solicits and reflect the following information:

- Demographics (age, gender, ethnicity) of designated OTP site
- History (Screening) of Hepatitis C exposure
- Results of Rapid Hepatitis C Testing (Kit) and Follow-up information
- Service Provided (type of vaccine given) Divalent vaccine (Twinrix-combination HAV and HBV) or Monovalent vaccine (HAV and/or HBV)
- Substance Abuse Treatment Outcomes (Information regarding the beginning, continuing or completion of vaccination series)
- Type of Referral Services Indicated (i.e., Gastroenterology, TB; Mental Health, Counseling, Reproductive/Prenatal, etc.)

This program is authorized under Section 509 of the Public Health Service (PHS) Act [42 U.S.C. 290bb–2].

The form increases the screening and reporting of viral hepatitis in high risk minorities in OTPs. The information collected allows SAMHSA to address the increased morbidity and mortality of hepatitis in minorities being treated for drug addiction.

The SAMHSA/CSAT Hepatitis Testing and Vaccine Tracking Form supports quality of care, provide minimum but adequate clinical and product monitoring, and provide appropriate safeguards against fraud, waste and abuse of Federal funds.

The table below reflects the annualized hourly burden.

Number of respondents screened	Responses/ respondent	Burden hours	Total burden hours
50,000	1	0.05	2,500

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 *or* email her a copy at *summer.king@samhsa.hhs.gov*. Written comments must be received before 60 days after the publication in the **Federal Register**.

Summer King,

Statistician.

[FR Doc. 2012–9662 Filed 4–20–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0274]

Information Collection Requests to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0033, Display of Fire Control Plans for Vessels and 1625–0047, Plan Approval and Records for Vital System Automation. Our ICRs describe the information we seek to collect from the public. Before submitting these ICRs to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 22, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0274] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *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.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to 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: 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. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2012–0274], and must be received by June 22, 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–2012–0274], 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–2012–0274'' 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–2012–0274'' 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.

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).

Information Collection Requests

1. *Title:* Display of Fire Control Plans for Vessels.

OMB Control Number: 1625–0033.

SUMMARY: This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aid firefighters and damage control efforts in response to emergencies.

Need: Under 46 U.S.C. 3305 and 3306, the Coast Guard is responsible for ensuring the safety of inspected vessels and has promulgated regulations in 46 CFR parts 35, 78, 97, 109, 131, 169, and 196 to ensure that safety standards are met.

Forms: None.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 514 hours to 581 hours a year.

2. *Title:* Plan Approval and Records for Vital System Automation.

OMB Control Number: 1625–0047.

SUMMARY: This collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate regulations for the safety of personnel and property on board vessels. Various sections within parts 61 and 62 of Title 46 of the Code of Federal Regulations contain these rules.

Forms: None.

Respondents: Owners, operators, shipyards, designers, and manufacturers of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 60,000 hours to 39,900 hours a year.

Dated: April 16, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–9648 Filed 4–20–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0032]

Federal Radiological Preparedness Coordinating Committee

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on May 3, 2012 in Arlington, VA.

DATES: The meeting will take place on May 3, 2012. The session is open to the public from 10 a.m. to 11 a.m. Please note that the meeting may close early if the Committee has completed its business. Send written statements and requests to make oral statements to the contact person in the **FOR FURTHER INFORMATION CONTACT** section by close of business April 27, 2012.

ADDRESSES: The meeting will be held at the Radisson Hotel Reagan National Airport in Salons III and IV at 2020 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Richard Collins, Program Specialist (Emergency Management), DHS/FEMA, 1800 South Bell Street—CC858, Mail Stop 3025, Arlington, VA 20598–3025; telephone (202) 212–4357; fax (703) 308–0328; or email *richard.collins@dhs.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44 CFR 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on May 3, 2012 from 10 a.m. to 11 a.m., at the Radisson Hotel Reagan National Airport in Salons I, II and III at 2020 Jefferson Davis Highway, Arlington, VA 22202. Please note that the meeting may close early. This meeting is open to the public.

Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on April 27, 2012, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) Public Plume Modeling Products, (3) FRPCC Charter Update, (4) Research and Development Subcommittee Update. The FRPCC Co-Chairs shall conduct the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on April 27, 2012, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on April 27, 2012, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Authority: 44 CFR 351.10(a); 351.11(a).

Dated: April 12, 2012.

Timothy W. Manning,

Deputy Administrator, Protection and National Preparedness, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–9622 Filed 4–20–12; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5604–N–03]

Notice of Proposed Information Collection for Public Comment: FY 2012 Notice of Funding Availability (NOFA) for Rural Capacity Building Program

AGENCY: Office of the Community Planning & Development, U.S. Department of Housing & Urban Development.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due on or before June 22, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval

number and should be sent to: William Kelleher, Paperwork Reduction Act Officer, Office of Community Planning & Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Julie D. Hovden, Office of Community Planning and Development, telephone (202) 402–4496 (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 through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

The Consolidated and Further Continuing Appropriations Act for Fiscal Year 2012 (Pub. L. 112–55), provided $5 million for national organizations to develop the ability and capacity of rural communities to undertake community development and affordable housing projects and programs in rural areas. The national organizations must have expertise in rural housing, including experience working with rural housing organizations, local governments, and Indian tribes. Awardees will be selected through a competitive process, announced through a Notice of Funding Availability (NOFA) that announces the amount of Rural Capacity Building grant funds and the application criteria, including the rating and ranking system HUD will use to select grantees.

Title of Proposal: FY 2012 Notice of Funding Availability (NOFA) for Rural Capacity Building Program.

Description of the Need for the Information and Its Proposed Use: The Narratives associated with Rural Capacity Building program will allow CPD to accurately assess the experience, expertise, and overall capacity of national organizations with expertise in rural housing, including experience working with rural housing organizations, local governments, and Indian tribes. HUD requires information in order to ensure the eligibility of Rural Capacity Building program applicants and proposals, to rate and rank applications, and to select applicants for grant awards. The Rural Capacity Building NOFA requires applicants to submit specific forms and narrative responses.

OMB Control Number: 2506–Pending.

Agency Form Numbers: SF–424, HUD 424–CB, HUD 424–CBW, SF LLL,

Members of Affected Public: National not-for-profit organizations with expertise in rural housing, including experience working with rural housing organizations, local governments, and Indian tribes; State, Local or Tribal Governments.

	Number of respondents	Annual responses	Hours per response	Burden hours
Application	30	1	40	1200

Status: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 17, 2012.

Frances Bush,

Acting Deputy Assistant Secretary for Operations, Office of Community Planning & Development.

[FR Doc. 2012–9716 Filed 4–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5604–N–02]

Notice of Proposed Information Collection for Public Comment: Continuum of Care Homeless Assistance—Technical Submission

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 22, 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, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, 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 a copy of proposed forms, or other available information. 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.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (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 through the use of appropriate

automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance—Technical Submission.

Description of the need for the information and proposed use: Information to be used to obtain more detailed technical information not contained in the original Continuum of Care Homeless Assistance Grant Application.

Agency form number: HUD–40090–3a.

Members of affected public: Applicants that are successful in the Continuum of Care Homeless Assistance Grant competition.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 500 responses, per annum (500 x 1 form), nine hours to prepare HUD–20090–3a, 4,500 hours total reporting.

Status of the proposed information collection: Revision of currently approved package 2506–0183.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 17, 2012.

Yolanda Chávez,

Deputy Assistant Secretary for Grant Programs.

[FR Doc. 2012–9690 Filed 4–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5618–N–01]

Section 8 Housing Assistance Payments Program—Fiscal Year (FY) 2012 Inflation Factors for Public Housing Agency (PHA) Renewal Funding

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The FY 2012 HUD Appropriations Act requires that HUD apply ''an inflation factor as established by the Secretary, by notice published in the **Federal Register**'' to adjust FY 2012 renewal funding for the tenant-based rental assistance voucher program or housing choice voucher (HCV) program of each PHA. For FY 2011 and FY 2010, renewal funding was based on annual adjustment factors (AAFs) and HUD published separate Renewal Funding AAFs for this purpose. The Renewal Funding AAFs, based only on Consumer Price Index (CPI) data for rents and utilities, have been replaced by inflation factors that incorporate additional economic indices to measure the expected change in the per unit cost (PUC) for the HCV program.

DATES: *Effective Date:* April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Michael S. Dennis, Director, Housing Voucher Programs, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, telephone number 202–708–1380; or Geoffrey Newton, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, telephone number 202–402–6058, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the inflation factors, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

Tables showing Renewal Funding Inflation Factors will be available electronically from the HUD data information page at: *http://www.huduser.org/huduser/datasets/rfif/FY2012/FY2012_IF_Table.pdf.*

In prior years, the Department of Housing and Urban Development has been using Renewal Funding AAFs based on Consumer Price Index data published by the Bureau of Labor Statistics on ''rent of primary residence'' and ''fuels and utilities'' as the inflation factor to calculate the renewal funding for each PHA. During this period, HUD has undertaken several projects to better understand the drivers of the annual change in housing subsidy costs for the tenant-based voucher program. The Consolidated and Further Continuing Appropriations Act, 2012 (Title II, of Division C, Public Law 112–55, approved November 18, 2011) provides that the HUD Secretary shall, for the calendar year 2012 funding cycle, provide renewal funding for each public housing agency (PHA) based on validated voucher management system (VMS) leasing and cost data for the prior calendar year and by applying an inflation factor as established by the Secretary, by notice published in the **Federal Register**. This Notice provides the inflation factors (that were announced to PHAs on March, 1, 2012) and describes the methodology for calculating them.

II. Methodology

The Department has focused on measuring the change in average PUC as captured in HUD's administrative data in VMS. In order to predict the likely path of PUC over time, HUD has implemented a model that uses several economic indices that capture key components of the economic climate and assist in explaining the changes in PUC. These economic components are the seasonally-adjusted unemployment rate (lagged twelve months) and the Consumer Price Index from the Bureau of Labor Statistics, and the ''wages and salaries'' component of personal income from the National Income and Product Accounts from the Bureau of Economic Analysis. This model subsequently forecasts the expected annual change in average PUC from FY 2011 to FY 2012 for the voucher program on a national basis by incorporating comparable economic variables from the Administration's economic assumptions. For reference, these economic assumptions are described in the FY 2012 Mid-Session Review.

The inflation factor for an individual geographic area is based on the change in the area's Fair Market Rent (FMR) between FY 2011 and FY 2012. These changes in FMR are then scaled such that the voucher-weighted average of all individual area inflation factors is equal to the expected annual change in national PUC from FY 2011 to FY 2012, and also such that no area has a negative factor. HUD subsequently applies these calculated individual area inflation factors to eligible renewal funding for each PHA based on VMS leasing and cost data for the prior calendar year. For the CY 2012 PHA HCV allocation that was announced on March, 1, 2012, HUD used 1.71 percent as the annual change in PUC. When calculated using more recent VMS data through December of 2011 and actual performance of economic indices through the December of 2011, HUD expects this annual change in PUC to be lower.

III. The Use of Inflation Factors

The inflation factors have been developed to account for relative differences in the PUC of vouchers so that HCV funds can be allocated among PHAs. HUD will continue to update the current model with available data in order to assess the expected annual change in PUC and intends to update

the methodology for future funding estimates. HUD is also continuing to review and refine the methodology, especially for area differences in the factors, which will be described in future inflation factor notices.

IV. Geographic Areas

Inflation factors based on PUC forecasts are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the inflation factor that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors. For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

The tables showing the Renewal Funding Inflation Factors available electronically from the HUD data information page list the inflation factors for the four Census Regions first, followed by an alphabetical listing of each metropolitan area, beginning with Akron, OH, MSA. The inflation factors use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2012 FMRs.

V. Area Definitions

To make certain that they are referencing the correct inflation factors, PHAs should refer to the Area Definitions Table on the following Web page: *http://www.huduser.org/huduser/datasets/rfif/FY2012/FY2012_AreaDef.pdf.* The Area Definitions Table lists areas in alphabetical order by state, and the associated Census Region is shown next to each state name. If the area where a unit is located is not separately listed, the inflation factor for the Census Region that includes that area is used. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. Any location in these states that are not specifically listed should use the Northeast Census Region inflation factor.

Puerto Rico and the Virgin Islands use the South Region inflation factors. All areas in Hawaii use the Renewal Funding inflation factors listed next ''Hawaii,'' in Appendix A which is based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region Renewal Funding inflation factor.

VI. Environmental Impact

This Notice involves a statutorily required establishment of a rate or cost determination which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: April 13, 2012.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–9692 Filed 4–20–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N090; FXES11130100000F5–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct enhancement of survival activities with an endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by May 23, 2012.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–2071) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with U.S. endangered or threatened species for scientific purposes or to enhance the propagation or survival of the affected species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–210255.

Applicant: Ryan Sylvester, Montana Fish, Wildlife and Parks, Libby, Montana.

The permittee requests an amendment to an existing scientific research permit to take (tag, conduct adult and juvenile telemetry, determine sex and maturity, and possible use of egg mats and larval sampling) the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) in conjunction with research in the State of Montana, for the purpose of enhancing the species' survival. The original permit was announced in a notice that published in the **Federal Register** on April 22, 2009 (74 FR 18396).

Public Availability of Comments

All comments and materials we receive in response to this request will

be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dates: April 12, 2012.

Hugh Morrison,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–9715 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14854–A; LLAK965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Iqfijouaq Company. The decision approves for conveyance the surface estate in the lands described below, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Iqfijouaq Company. The lands are in the vicinity of Eek, Alaska, and are located in:

Seward Meridian, Alaska

T. 4 N., R. 72 W.,
Sec. 3.
Containing 340.88 acres.

T. 1 S., R. 75 W.,
Secs. 6 and 7.
Containing 171.31 acres.
Aggregating 512.19 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 23, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM.

The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2012–9689 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14879–A, F–14879–A2; LLAK962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Kotlik Yupik Corporation. The decision approves for conveyance the surface estate in certain lands pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601, *et seq.*). The lands approved for conveyance lie partially within the Clarence Rhode National Wildlife Range in existence on the date ANCSA was enacted, December 18, 1971. As provided by ANCSA, the subsurface estate in the lands lying outside the Range will be conveyed to Calista Corporation when the surface estate is conveyed to Kotlik Yupik Corporation. The subsurface estate in the lands lying within the Range is not available for conveyance to Calista Corporation and will be reserved to the United States at the time of conveyance. The lands are in the vicinity of Kotlik, Alaska and are described as:

Lands within the Clarence Rhode National Wildlife Range (Public Land Order No. 4589), now known as the Yukon Delta National Wildlife Refuge
Surface estate to be conveyed to Kotlik Yupik Corporation; subsurface estate to be reserved to the United States

Kateel River Meridian, Alaska

T. 26 S., R. 27 W.,
Sec. 24.
Containing 0.37 acres.

Lands outside the Clarence Rhode National Wildlife Range (Public Land Order No. 4589), now known as the Yukon Delta National Wildlife Refuge National Wildlife Refuge
Surface estate to be conveyed to Kotlik Yupik Corporation; subsurface estate to be conveyed to Calista Regional Corporation

Kateel River Meridian, Alaska

T. 28 S., R. 24 W.,
Sec. 30.
Containing 25 acres.

T. 27 S., R. 26 W.,
Sec. 36.
Containing 5 acres.
Aggregating 30 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 23, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Ralph L. Eluska, Sr.,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2012–9687 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14849–A, F–14849–A2; LLAK965 000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Chevak Company. The decision approves for conveyance the surface estate in the lands described below, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). These lands lie entirely within Public Land Orders 2213 and 4584, Clarence Rhodes National Wildlife Range now known as the Yukon Delta Wildlife Refuge. The subsurface estate will be reserved to the United States in the conveyance to Chevak Company. The lands are in the vicinity of the village of Chevak, Alaska, and are described as:

Lot 2, U.S. Survey 12912, Alaska.

Containing 159.97 acres.

Seward Meridian, Alaska

T. 15 N., R. 93 W.,
Sec. 15.

Containing 3.95 acres.

T. 17 N., R. 90 W.,
Secs. 24, 25, and 26.

Containing 85.54 acres.
Aggregating 249.46 acres.

Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 23, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Judy A. Kelley,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–9686 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14200000.BJ0000 241A; 12–08807; MO# 4500033715; TAS: 14X1109]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6541. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 9, 2012:

This plat, in six sheets, represents the dependent resurvey of portions of the south, east and north boundaries, a portion of the subdivisional lines, portions of the subdivision-of-section lines of certain sections, Indian Allotment No. 108, a portion of Indian Allotment No. 493, and a portion of Mineral Survey No. 4542, the subdivision of certain sections, and the further subdivision of certain sections, Township 13 North, Range 28 East, of the Mount Diablo Meridian, Nevada, under Group No. 878, was accepted January 5, 2012. This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on February 16, 2012:

This plat represents the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the survey of the meanders of the 4,144-foot contour line in section 36, Township 33 North, Range 32 East, of the Mount Diablo Meridian, Nevada, under Group No.

888, was accepted February 10, 2012. This survey was executed to meet certain administrative needs of Pershing County Water Conservation District.

3. Pending additional resurveys the following portions of the listed township plats are hereby suspended, effective on this date: February 21, 2012.

Township 1 South, Range 38 East, plat approved April 14, 1884, sections 1 through 6 inclusive.

Township 1 South, Range 39 East, plat approved April 14, 1884, sections 1 through 6 inclusive.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on February 22, 2012:

This supplemental plat, in one sheet, showing amended lottings in sections 7, Township 15 South, Range 66 East, Mount Diablo Meridian, Nevada, under Group No. 913, was accepted February 17, 2012. This supplemental plat was prepared to accommodate a direct land sale under the provisions of the Federal Land Policy and Management Act.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on February 24, 2012:

This plat represents the dependent resurvey of the Fourth Standard Parallel South through a portion of Range 49 East and a portion of the subdivisional lines, and the subdivision of sections 3 and 4, Township 17 South, Range 49 East, of the Mount Diablo Meridian, Nevada, under Group No. 900, was accepted February 21, 2012. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

6. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on March 1, 2012:

This plat, in two sheets, represents the dependent resurvey of portions of the west and north boundaries and a portion of the subdivisional lines, the subdivision of sections 6 and 18, and the survey of the meanders of portions of the 4,144-foot contour line, Township 30 North, Range 33 East, of the Mount Diablo Meridian, Nevada, under Group No. 879, was accepted February 28, 2012. This survey was executed to meet certain administrative needs of Pershing County Water Conservation District.

7. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on March 7, 2012:

A plat, in three sheets, represents the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the subdivision of sections 27, 34 and 35, and the metes-and-bounds surveys of certain parcel boundaries through portions of sections 27 and 34, Township 7 South, Range 61 East, of the Mount Diablo Meridian, Nevada, under Group No. 893, was accepted March 2, 2012.

A plat, in nine sheets, represents the dependent resurvey of the Second Standard Parallel South, through a portion of Range 61 east, a portion of the east boundary, a portion of the subdivisional lines, and a portion of the meanders of lower Pahranagat Lake the subdivision of certain sections and the metes-and-bounds surveys of certain parcel boundaries through portions of sections 2, 11, 14, 24 and 25, Township 8 South, Range 61 East, of the Mount Diablo Meridian, Nevada, under Group 893, was accepted March 2, 2012.

A plat, in four sheets, represents the dependent resurvey of the Second Standard Parallel South, through a portion of Range 62 east, a portion of the subdivisional lines, and a portion of the meanders of lower Pahranagat Lake the subdivision of sections 30, 31 and 32, and the metes-and-bounds surveys of certain parcel boundaries through portions of sections 30, 31 and 32, Township 8 South, Range 62 East, of the Mount Diablo Meridian, Nevada, under Group 893, was accepted March 2, 2012. The survey of the three townships listed above were executed to meet certain administrative needs of the U.S. Fish and Wildlife Service.

8. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on April 5, 2012:

This plat, in one sheet, represents the dependent resurvey of the Seventh Standard Parallel North, through a portion of Range 23 East, a portion of the subdivisional lines and the subdivision of section 4, Township 35 North, Range 23 East, of the Mount Diablo Meridian, Nevada, under Group No. 909, was accepted March 28, 2012. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The survey listed above is now the basic record for describing the lands for all authorized purposes. This survey has been placed in the open files in the Bureau of Land Management, Nevada State Office and is available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: April 16, 2012.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2012–9723 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY9210000. L143000000.EU0000, WYW167526]

Notice of Realty Action; Notice of Segregation and Proposed Sale of Public Lands, Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Two parcels of public land totaling 970 acres in Sweetwater County, Wyoming, are being proposed for sale.

DATES: In order to ensure consideration in the environmental analysis for the proposed sale, comments must be received by June 7, 2012.

ADDRESSES: Address all comments concerning this notice to Lance Porter, Bureau of Land Management (BLM), Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901–3447.

FOR FURTHER INFORMATION CONTACT: Patricia Hamilton, Realty Specialist, at the above address, phone 307–352–0334, or email *phamilto@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following public lands are being proposed for sale at no less than the appraised fair market value under the authority of Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 Stat. 2750, 43 U.S.C. 1713):

Sixth Principle Meridian

T. 18 N., R. 108 W.,

Sec. 10, W½W½NW¼NE¼, S½NE¼, NW¼, W½SW¼, N½NE¼SW¼, and N½N½SE¼;

Sec. 12, W½NW¼NE¼, S½NE¼, W½, and SE¼.

The areas described aggregate 970 acres in Sweetwater County according to the official plats of the surveys of the said lands on file with the BLM.

The 1997 BLM Green River Resource Management Plan identifies these parcels of public land as suitable for disposal. Conveyance of the identified public lands will be subject to valid existing rights and encumbrances of record, including, but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interest pursuant to Section 209 of the FLPMA will be analyzed during processing of the proposed sale.

On April 23, 2012, the above-described lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, with the exception of applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon the issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or April 23, 2014, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments: Until June 7, 2012, interested parties and the general public may submit in writing any comments concerning the lands being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Lance Porter at the above address. Comments transmitted via email will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Rock Springs Field Office during regular business hours, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2711.1–2)

Larry Claypool,

Deputy State Director.

[FR Doc. 2012–9684 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY9210000, L54100000.FR0000, WYW180014]

Notice of Segregation and Possible Conveyance of Federally Owned Mineral Interests Application; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice segregates the federally owned mineral interests underlying the non-Federal lands described in this notice aggregating approximately 579.74 acres in Crook County, Wyoming, from location and entry under the mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to Section 209 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA).

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Jennifer Whyte, Realty Specialist, Bureau of Land Management (BLM), 5353 North Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6232 or via email at *jwhyte@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose is to allow consolidation of surface and subsurface minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

The federally owned mineral interests underlying the following-described non-Federal lands in Crook County, Wyoming, are being considered for conveyance under the authority of Section 209 of FLPMA, (43 U.S.C. 1713):

Sixth Principle Meridian

T. 53 N., R. 66 W.,
Sec. 1, SW¼SW¼;
Sec. 2, SE¼SE¼;
Sec. 3, lot 2, SW¼NE¼, N½SW¼, SE¼SW¼, and NW¼SE¼, excluding mining claims of record;
Sec. 10, NE¼NW¼, excluding mining claims of record;
Sec. 11, N½SW¼, and SE¼SW¼;
Sec. 12, N½NW¼;
Sec. 14, NE¼NW¼;
Sec. 15, NW¼NE¼, and NE¼NW¼.

The areas described aggregate 579.74 acres in Crook County, according to the official plats of the surveys of the said lands, on file with the BLM.

Under certain conditions, including payment of the administrative costs and fair market value of the interest conveyed, Section 209(b) of FLPMA authorizes the sale and conveyance of the federally owned mineral interests in land when the non-mineral interest (or so-called surface interest) in land is not federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) Continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

An application was filed by YPI, Incorporated for the sale and conveyance of the federally owned mineral interests in the above-described tract of land. Subject to valid existing rights, on April 23, 2012 the federally owned mineral interests in the land described above are hereby segregated from appropriation under the general mining and mineral leasing laws, while the application is being processed to determine if either one of the two specified conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR part 2720. The segregative effect shall terminate: (i) Upon issuance of a patent or other document of conveyance as to such mineral interests; (ii) Upon final rejection of the application; or (iii) April 23, 2014, whichever occurs first.

(Authority: 43 CFR 2720.1–1(b))

Larry Claypool,

Deputy State Director.

[FR Doc. 2012–9685 Filed 4–20–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the May 5, 2012, for meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, May 5, 2012, from 10 a.m. to 1 p.m. (Eastern).

Location: The meeting will be held at the Flight 93 National Memorial Office, 109 West Main Street, Suite 104, Somerset, PA 15501.

Agenda

The meeting will consist of:

1. Opening of Meeting Review and Approval of Commission Minutes from the meeting before.
2. Reports.
3. Old Business.
4. New Business.
5. Public Comments.
6. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Reinbold, Superintendent, Flight 93 National Memorial, P.O. Box 911, Shanksville, PA 15560, 814.893.6322.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, P.O. Box 911, Shanksville, PA 15560. 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: March 27, 2012.

Jeffrey P. Reinbold,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2012–9621 Filed 4–20–12; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–350 and 731–TA–616 and 618 (Third Review)]

Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea; Notice of Commission Determinations To Conduct Full Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on corrosion-resistant carbon steel flat products from Korea and the antidumping duty orders on corrosion-resistant carbon steel flat products from Germany and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 9, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On April 9, 2012, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (77 FR 301, January 4, 2012) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 18, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9665 Filed 4–20–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB No. 1121–0325]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Research To Support the National Crime Victimization Survey (NCVS)

ACTION: 30-Day Notice of new collection.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 30, page 8277 on Tuesday February 14, 2012 allowing for a 60 day comment period. No comments were received in response to the information provided.

The purpose of this notice is to allow for an additional 30 days for public comment until May 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of the time frame required to complete approved and ongoing methodological research on the National Crime Victimization Survey continuing beyond June 30, 2012. Generic clearance for future methodological research on the National Crime Victimization Survey.

(2) *Title of the Form/Collection:* National Crime Victimization Survey.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* n/a.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Persons ages 12 or older are eligible for participation in the NCVS. This generic clearance will cover methodological research that will use existing or new sampled households with the same ages of respondents currently used in the NCVS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* For ongoing redesign projects that have received OMB clearance or are currently under review, approximately 26,200 persons ages 18 or older are participating in the methodological research. Under the 2012 generic information clearance request, approximately 3,500 persons ages 18 or older will participate in the methodological research. The time for each respondent to participate will vary based on the study component. For studies currently in the field test stage, the average time to complete an interview request is 15 minutes. For developmental work such as cognitive interviewing and feasibility testing, the time for each respondent to participate will range from 1 to 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* For ongoing redesign projects that have received OMB clearance or are currently under review, the total respondent burden is approximately 11,100 hours. Under the 2012 generic information clearance request, the total respondent burden is approximately 1,800 hours for the three years of this clearance.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–9679 Filed 4–20–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging Fifth Amendment To Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 16, 2012, a proposed consent decree amendment in *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD, was lodged with the United States District Court for the District of Wyoming.

The proposed Fifth Amendment To Consent Decree would resolve the United States' claims against Sinclair Wyoming Refining Company (''SWRC'') under the original consent decree and Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), that resulted from the January 22, 2011 fire at SWRC's refinery in Sinclair, Wyoming, that damaged the facility's electrostatic precipitator (an emissions control device). Under the terms of the Fifth Amendment To Consent Decree, the SWRC will take action to obtain additional emissions reductions at SWRC's refinery in Sinclair, Wyoming, that will more than offset the emissions that resulted from the fire.

The Department of Justice will receive comments relating to the proposed consent decree amendment for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sinclair Wyoming Refining Co., et al.,* Case No. 08–cv–020–WFD, and Department of Justice Reference No. 90–5–2–1–07793.

During the public comment period, the consent decree amendment may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree amendment 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 ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $4.50 ($.25 per page) 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 address given above.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–9672 Filed 4–20–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[Docket No. OTJ 102]

Solicitation of Comments on Request for United States Assumption of Concurrent Federal Criminal Jurisdiction; White Earth Nation

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: This notice solicits public comments on the Request for United States Assumption of Concurrent Federal Criminal Jurisdiction recently submitted to the Office of Tribal Justice, Department of Justice by the White Earth Nation pursuant to the provisions of 28 CFR 50.25.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before June 7, 2012. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

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

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

• *Mail or Hand Delivery/Courier:* submit written comments via regular or express mail to Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530.

• *Fax:* submit comments to the attention of Mr. Tracy Toulou, Office of Tribal Justice, Department of Justice, (202) 514–9078 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number). To ensure proper handling of comments, please reference ''Docket No. OTJ 102'' on all electronic and written correspondence. The Department encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of the request for United States assumption of concurrent federal criminal jurisdiction submitted by the White Earth Nation is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record.

SUPPLEMENTARY INFORMATION: *Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Statutory Background

For more than two centuries, the Federal Government has recognized Indian tribes as domestic sovereigns that have unique government-to-government relationships with the United States. Congress has broad authority to legislate with respect to Indian tribes, however, and has exercised this authority to establish a complex jurisdictional scheme for the prosecution of crimes committed in Indian country. (The term ''Indian country'' is defined in 18 U.S.C. 1151.) Criminal jurisdiction in Indian country typically depends on several factors, including the nature of the crime; whether the alleged offender, the victim, or both are Indian; and whether a treaty, Federal statute, executive order, or judicial decision has conferred jurisdiction on a particular government.

The Tribal Law and Order Act (TLOA) was enacted on July 29, 2010, as Title II of Public Law 111–211. The purpose of the TLOA is to help the Federal Government and tribal governments better address the unique public-safety challenges that confront tribal communities. Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to State criminal jurisdiction under Public Law 280, Public Law 83–280, 67 Stat. 588 (1953) to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within that tribe's Indian country.

Department of Justice Regulation Implementing 18 U.S.C. 1162(d)

On December 6, 2011, 76 FR 76037 the Department published final regulations that established the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. 28 CFR 50.25. Among other provisions, the regulations provide that upon receipt of a tribal request the Office of Tribal Justice shall publish a notice in the **Federal Register** seeking comments from the general public.

Request by the White Earth Nation

By a request dated February 8, 2012, the White Earth Nation located in the State of Minnesota requested the United States to assume concurrent Federal jurisdiction to prosecute violations of 18 U.S.C. 1152 (the General Crimes, or Indian Country Crimes, Act) and 18 U.S.C. 1153 (the Major Crimes Act) within the Indian country of the tribe. This would allow the United States to assume concurrent criminal jurisdiction over offenses within the Indian country of the tribe without eliminating or affecting the State's existing criminal jurisdiction.

Solicitation of Comments

This notice solicits public comments on the above request.

Dated: April 17, 2012.

Tracy Toulou,

Director, Office of Tribal Justice.

[FR Doc. 2012–9729 Filed 4–20–12; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0026]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Report of Theft or Loss of Explosives

ACTION: 30-Day Notice of information collection under review.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 77, Number 24, page 5845 on February 6, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Regulatory Affairs, Office of

Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight-digit OMB number or the title of the collection. If you have questions concerning the collection, contact DOJ Desk Officer at 202–514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Theft or Loss of Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None.

Need for Collection

Losses or theft of explosives must, by statute be reported within 24 hours of the discovery of the loss or theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 300 respondents will complete the form within 1 hour and 48 minutes.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 540 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–9680 Filed 4–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0079]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Transactions Among Licensee/Permittees and Transactions Among Licensees and Holders of User Permits

ACTION: 30-Day Notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 77, Number 30, page 8277 on February 14, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 23, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be directed to The Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection. If you have questions concerning the collection, please contact William Miller, 202–648–7120, *eipb@atf.gov* or the DOJ Desk Officer at 202–514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensee/Permittees and Transactions Among Licensees and Holders of User Permits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None.

Need for Collection

The Safe Explosives Act requires an explosives distributor must verify the identity of the purchaser; an explosives purchaser must provide a copy of the license/permit to distributor prior to the purchase of explosive materials; possessors of explosive materials must provide a list of explosives storage locations; purchasers of explosive materials must provide a list of representatives authorized to purchase on behalf of the distributor; and an explosive purchaser must provide a

statement of intended use for the explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will take 30 minutes to comply with the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 25,000 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–9682 Filed 4–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0061]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Certificate of Compliance With 18 U.S.C. 922(g)(5)(B)

ACTION: 60-Day Notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 22, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracey Robertson, Acting Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405 or via email at *tracey.robertson@atf.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certificate of Compliance with 18 U.S.C. 922(g)(5)(B).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5330.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The law of 18 U.S.C. 922(g)(5)(B) makes it unlawful for any nonimmigrant alien to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has shipped or transported in interstate or foreign commerce. ATF F 5330.20 is for the purpose of ensuring that nonimmigrant aliens certify their compliance according to the law at 18 U.S.C. 922(g)(5)(B).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 37,826 respondents will complete the form in 3 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1891.3 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2012–9681 Filed 4–20–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Information Collection Approval; Temporary Non-Agricultural Employment of H–2B Aliens in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of Office of Management and Budget (OMB) approval of information collection requirements.

SUMMARY: The Paperwork Reduction Act (PRA) requires this notice to set forth the effectiveness of information collection requirements contained in 20 CFR part 655, related to the Temporary Non-Agricultural Employment of H–2B Aliens in the United States; Final Rule. See 77 FR 10038, Feb. 21, 2012.

DATES: On April 8, 2012, OMB approved under the PRA the Department of Labor's information collection request for requirements in 20 CFR part 655. The current expiration date for OMB authorization for this information collection is April 30, 2015.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in 20 CFR part 655 may be submitted to: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone:

(202) 693–3010 (this is not a toll-free number).

Questions of interpretation and/or enforcement of regulations referenced in this notice may be directed to: Michael S. Jones, Acting Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, Room N–5641, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–3700 (this is not a toll-free number).

This notice is available through the printed **Federal Register** and electronically via the *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* Web site. Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: OMB has approved under the PRA information collection requirements contained in recently revised final regulations under the Immigration and Nationality Act published by the Department of Labor in the **Federal Register** on February 21, 2012. See 77 FR 10038. The purpose of the Final Rule was to amend the H–2B regulations at 20 CFR part 655, Subpart A governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal non-agricultural employment to provide for increased worker protections and improve program integrity.

On April 8, 2012, OMB approved the Department's information collection request under Control Number 1215–0466, thus giving effect to the requirements, as announced and published in the **Federal Register** on February 21, 2012, under the PRA. The current expiration date for OMB authorization for this information collection is April 30, 2015.

Signed in Washington, this 16th day of April, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–9613 Filed 4–20–12; 8:45 am]

BILLING CODE 4510–FP–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Determination of Benchmark Compensation Amount for Certain Executives

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Management and Budget is publishing the attached memorandum to the Heads of Executive Departments and Agencies announcing that $763,029 is the ''benchmark compensation amount'' for certain executives in terms of costs allowable under Federal Government contracts during contractors' fiscal year 2011. This determination is required under Section 39 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 1127; formerly, 41 U.S.C. 435). The benchmark compensation amount applies to both defense and civilian agencies.

FOR FURTHER INFORMATION CONTACT: Raymond Wong, Office of Federal Procurement Policy, at 202–395–6805.

Lesley A. Field,

Acting Administrator, Office of Federal Procurement Policy.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Lesley A. Field, Acting Administrator, Office of Federal Procurement Policy

SUBJECT: Determination of Benchmark Compensation Amount for Certain Executives, Pursuant to Section 39 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 1127)

This memorandum sets forth the benchmark compensation amount for certain executives as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act, as amended (41 U.S.C. 1127; formerly, 41 U.S.C. 435). The statutory benchmark amount limits the allowability of compensation costs under Federal Government contracts as implemented at FAR 31.205–6(p). In less technical terms, the statute places a cap on the amount of contractor-paid executive compensation that the Federal Government will reimburse, in the case of those contractors that are performing contracts that are of a cost-reimbursable or other cost-based nature. It should be noted that, while the statute places a cap on the amount that the Federal Government will reimburse the contractor, the statute does not limit the amount of compensation that the contractor actually pays to its executives; contractors can, and do, provide compensation to their executives that exceed the statutory benchmark compensation amount.

Section 39 of the OFPP Act sets out a formula for determining the benchmark compensation amount. Specifically, the benchmark amount is set at the median (50th percentile) amount of compensation over a recent 12-month period for the five most highly compensated employees in management positions at each home office and each segment of all publicly-owned companies with annual sales over $50 million, and the determination is based on analysis of data made available by the Securities and Exchange Commission. Compensation for the fiscal year means the total amount of wages, salaries, bonuses, restricted stock, deferred and performance incentive compensation, and other compensation for the year, whether paid, earned, or otherwise accruing, as recorded in the employer's cost accounting records for the year.

After consultation with the Director of the Defense Contract Audit Agency, OFPP has determined, pursuant to the requirements of Section 39, that the benchmark compensation amount for certain executives for the contractors' fiscal year (FY) 2011 is $763,029. This amount is for contractors' FY 2011 and subsequent contractor fiscal years, unless and until revised by OFPP. This benchmark compensation amount applies to contract costs incurred after January 1, 2011, under covered contracts of both the defense and civilian procurement agencies as specified in Section 39.

This past fall, the Administration proposed that Congress, starting with FY 2011, replace the existing statutory formula for calculating the cap on the amount that the Federal Government will reimburse Federal contractors (both defense and civilian). This proposal was contained in the President's Plan for Economic Growth and Deficit Reduction, which is on OMB's Web site at *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/jointcommitteereport.pdf.* In place of the formula that is in Section 39, the President's Plan proposed (on page 21) that Congress put in place a reimbursement cap that would be equal to the pay rate for the Federal Government's most senior executives, who are the heads of the 15 Cabinet departments and certain other high-level officials. These senior-most

Federal officials are paid at the rate set for positions at Level I of the Executive Schedule (5 U.S.C. 5312). During calendar year 2011, the pay for Level I positions was $199,700, as set forth in Schedule 5 to Executive Order 13561 of December 22, 2010 (75 FR 81817, 81822; December 29, 2010).

The President's proposal was in response to the fact that the existing statutory formula (enacted in 1997) has resulted in the reimbursement cap tripling since the mid-1990s: whereas the reimbursement ceiling for 1995 was $250,000, the statutory formula has resulted in substantial annual increases in the subsequent years, so that by FY 2010 the reimbursement ceiling had reached $693,951. And, as this notice announces, the statutory formula has resulted in a reimbursement ceiling for FY 2011 of $763,029. This is an increase in just one year of nearly $70,000—and of 10%—in the amount that the taxpayers can be required to reimburse Federal contractors for the compensation that the contractors have decided to pay their executives. This rate of growth in the cap (both from 1995 onward, and in this most recent year) has far outpaced the rate of inflation, the rate of growth of private-sector salaries generally, and the rate of growth of Federal salaries—forcing our taxpayers to reimburse contractors for levels of executive compensation that cannot be justified for Federal contract work.

This is the direct result of the fact that the statutory formula sets the reimbursement ceiling, and increases it from one year to the next, by reference to considerations that have no relationship to the type of work that contractors are actually performing under Federal contracts that are cost-reimbursable or are otherwise cost-based. As noted above, the formula under Section 39 requires that the reimbursement ceiling be set, and adjusted annually, by reference to the amount that equals the following: the median (50th percentile) amount of compensation, over a recent 12-month period, that all publicly-owned companies with annual sales over $50 million have paid to their five most highly compensated employees in management positions at each home office and each segment. It is this formula, and not any comparable improvement in contractor performance (and the benefits that the taxpayers receive from these contracts), that has resulted in the one-year increase of $70,000 (10%) from FY 2010 to FY 2011, and the tripling from 1995 to FY 2011, in the amount that the taxpayers can be required to reimburse Federal contractors for the compensation that the contractors have chosen to pay to their senior executives.

By proposing to replace the existing statutory formula with a reimbursement cap that is tied to the salary of a Cabinet official (such as the Secretary of Defense), the President's Plan would bring parity between the amount that the American public pays for the senior executives of the Federal Government and for the senior executives of those contractors who perform work for the Federal Government on a cost-reimbursable or other cost-based arrangement. (As is the case with the current formula under Section 39 of the OFPP Act, the proposal in the President's Plan would not impose any limits on the amount of compensation that a contractor pays to its executives; the proposed cap at the level of the salaries of Cabinet officials would limit only how much the taxpayers will reimburse the contractors for the compensation decisions that the contractors have chosen.)

To date, Congress has not adopted the Administration's proposal to replace the existing statutory formula for determining the reimbursement cap. However, in Section 803 of the recently-enacted National Defense Authorization Act for FY 2012 (H.R. 1540; P.L. 112–81, December 31, 2011) (NDAA), Congress did extend the applicability of the existing cap to any contractor employee performing under a ''covered contract'' under 10 U.S.C. 2324 (which are contracts awarded by the Department of Defense, the Coast Guard, and NASA), with the exception that ''the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities.''

The effect of this new statutory provision is that, while the cap on reimbursement based on the Section 39 formula is retained, it will now apply to more employees—essentially all employees performing covered contracts for the Department of Defense, Coast Guard, and NASA (with narrowly targeted exceptions). This means that, for the first time, there will be a statutory cap (at the Section 39 level) on reimbursement for employee compensation for all employees performing under covered contracts, rather than only for a limited number of executives as has been the rule under Section 39 until now.

However, this broader application of the Section 39 cap does not apply to FY 2011. That is because Section 803 of the NDAA provides that its amendments ''shall apply with respect to costs of compensation incurred after January 1, 2012.'' Accordingly, the benchmark compensation amount in this notice, for FY 2011, applies only to the same limited number of contractor executives as did the Section 39 caps for FY 2010 and prior years. The broader application called for in Section 803 of the NDAA will be implemented through regulation and addressed in future notices.

Questions concerning this memorandum may be addressed to Raymond Wong, OFPP, at 202–395–6805.

[FR Doc. 2012–9747 Filed 4–20–12; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Social and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Nanoscale Science and Engineering Center (NSEC) at Arizona State University by the Division Social and Economic Sciences (#10748).

Dates & Times:

May 2, 2012; 7 p.m.–9 p.m.
May 3, 2012: 7:45 a.m.–9:15 p.m.
May 4, 2012: 8 a.m.–3:30 p.m.

Place: Arizona State University, Tempe, AZ.

Type of Meeting: Part open.

Contact Person: Dr. Frederick Kronz, Program Director; Science, Technology and Society Program; Division of Social and Economic Sciences, Room 990, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–7283.

Purpose of Meeting: To provide advice and recommendations concerning further support of the NSEC at the Arizona State University.

Agenda:

Wednesday, May 2, 2012

7 p.m.–9 p.m. Closed—Executive Session

Thursday, May 3, 2012

7:45 a.m.–4:30 p.m. Open—Review of the NSEC

4:15 p.m.–5:45 p.m. Closed—Executive Session

5:45 p.m.–9:15 p.m. Open—Poster Session; Dinner

Friday, May 4, 2012

8 a.m.–9 a.m. Closed—Executive session

9 a.m.–10:30 a.m. Open—Review of the NSEC

10:30 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report

Reason for Late Notice: Scheduling complications and the necessity to proceed with the review.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–9694 Filed 4–20–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Social and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Nanoscale Science and Engineering Center (NSEC) at University of California—Santa Barbara by the Division of Social and Economic Sciences (10748).

Dates & Times: May 6, 2012; 7 p.m.–9 p.m., May 7, 2012: 8 a.m.–9:15 p.m., May 8, 2012: 8 a.m.–3:30 p.m.

Place: University of California, Santa Barbara, California.

Type Of Meeting: Part open.

Contact Person: Dr. Frederick Kronz, Program Director; Science, Technology, and Society Program; Division of Social and Economic Sciences, Room 990, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–7283.

Purpose of Meeting: To provide advice and recommendations concerning further support of the NSEC at the University of California, Santa Barbara.

Agenda:

Sunday, May 6, 2012

7 p.m.–9 p.m. Closed—Executive Session

Monday, May 7, 2012

8 a.m.–4 p.m. Open—Review of the NSEC

4 p.m.–5:30 p.m. Closed—Executive Session

5:30 p.m.–9 p.m. Open—Poster Session; Dinner

Tuesday, May 8, 2012

8 a.m.–9 a.m. Closed—Executive session

9 a.m.–10:30 a.m. Open—Review of the NSEC

10:45 a.m.–4:15 p.m. Closed—Executive Session, Draft and Review Report

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the MRSEC. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 18, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–9695 Filed 4–20–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0202]

Condition Monitoring Techniques for Electric Cables Used in Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing a new guide regulatory guide, (RG) 1.218, ''Condition Monitoring Techniques for Electric Cables Used in Nuclear Power Plants.'' This guide describes techniques that the staff of the NRC considers acceptable for condition monitoring of electric cables for nuclear power plants. RG 1.218 is not intended to be prescriptive, instead it provides a description of many available techniques for testing cables of various configurations typically found in a nuclear power plant and discusses the potential suitability and known limitations of each.

ADDRESSES: Please refer to Docket ID NRC–2010–0202 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0202. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Regulatory Guide 1.218, is available in ADAMS under Accession No. ML103510447. The regulatory analysis may be found in ADAMS under Accession No. ML103510458.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Richard Jervey, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7404 or email *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

RG 1.218, ''Condition Monitoring Techniques for Electric Cables Used in Nuclear Power Plants'', was issued for public comment with a temporary identification as Draft Regulatory Guide, DG–1240. This guide describes techniques that the staff of the NRC considers acceptable for condition monitoring of electric cables for nuclear power plants. RG 1.218 is not intended to be prescriptive, instead it provides a description of many available techniques for testing cables of various configurations typically found in a nuclear power plant and discusses the potential suitability and known limitations of each.

II. Further Information

DG–1240, was published in the **Federal Register** on June 15, 2010, for

a 60 day public comment period. The public comment period closed on August 12, 2010. Public comments on DG–1240 and the staff responses to the public comments are available under ADAMS Accession Number ML103510471.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 11th day of April 2012.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–9691 Filed 4–20–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 10–12, 2012, 11545 Rockville Pike, Rockville, Maryland.

Thursday, May 10, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: U.S. EPR Spent Fuel Cask Transfer Facility (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of AREVA regarding the U.S. EPR spent fuel cask transfer facility including an overview of the fuel storage and handling system. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

9:45 a.m.–11:45 a.m.: Selected Chapters of the Safety Evaluation Report (SER) with Open Items Associated with the U.S. EPR Design Certification (DC) Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and AREVA regarding selected chapters of the NRC staff's SER with open items associated with the U.S. EPR DC application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

12:45 p.m.–2:15 p.m.: State-of-the-Art Reactor Consequence Analysis (SOARCA) Project (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Draft NUREG report on the SOARCA Project.

2:30 p.m.–4 p.m.: St. Lucie Unit 1 Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Florida Power & Light Company regarding the St. Lucie Unit 1 Extended Power Uprate Application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

4:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed report on draft final NUREG–1921, ''Fire HRA Guidelines.'' [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Friday, May 11, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

11 a.m.–11:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

12:30 p.m.–2 p.m.: Preparation for Meeting With the Commission on June 7, 2012 (Open)—The Committee will discuss topics for the upcoming meeting with the Commission on June 7, 2012.

2:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also discuss a proposed report on draft final NUREG–1921, ''Fire HRA Guidelines.'' [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Saturday, May 12, 2012 Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

11:30 a.m.–12 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each

presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: April 17, 2012

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2012–9701 Filed 4–20–12; 8:45 am]

BILLING CODE 7590–01–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: 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 December 1, 2011, and December 31, 2011. These notices are published monthly in the **Federal Register** at *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 December 2011.

Schedule B

No Schedule B authorities to report during December 2011.

Schedule C

The following Schedule C appointments were approved during December 2011.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Farm Service Agency	Special Assistant (Deputy Chief of Staff).	DA120017	12/1/2011
Department of Commerce	Office of the Chief of Staff	Senior Advisor	DC120018	12/2/2011
	Office of the Chief of Staff	Confidential Assistant	DC120022	12/6/2011
	Office of the Deputy Secretary	Special Assistant	DC120023	12/6/2011
	Office of the Under Secretary	Senior Advisor	DC120024	12/12/2011
	National Oceanic and Atmospheric Administration.	Special Assistant	DC120029	12/21/2011
	Import Administration	Special Advisor	DC120034	12/21/2011
	Office of the Deputy Secretary	Special Advisor	DC120035	12/22/2011
Commodity Futures Trading Commission.	Office of the Chairperson	Administrative Assistant	CT120003	12/1/2011
Department of Defense	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD120002	12/11/2011
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD120003	12/11/2011
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD120015	12/8/2011
Department of Education	Office of Communications and Outreach.	Special Assistant	DB110101	12/12/2011
	Office for Civil Rights	Senior Counsel	DB120022	12/12/2011
	Office for Civil Rights	Senior Counsel	DB120023	12/5/2011
	Office of Innovation and Improvement.	Associate Assistant Deputy Secretary.	DB120024	12/12/2011
	Office of Communications and Outreach.	Deputy Assistant Secretary, Intergovernmental Affairs.	DB120025	12/19/2011
	Office of Postsecondary Education.	Confidential Assistant	DB120026	12/12/2011
	Office of the General Counsel	Special Assistant	DB120028	12/27/2011
	Office of the Under Secretary	Executive Director, Whiainae	DB120031	12/27/2011
	Office of the Secretary	Confidential Assistant	DB120033	12/30/2011
Department of Energy	Office of Public Affairs	Special Assistant	DE120019	12/12/2011
	Office of Public Affairs	Deputy Director	DE120021	12/1/2011
	Office of Public Affairs	Press Secretary	DE120022	12/1/2011
Environmental Protection Agency	Operations Staff	Special Representative	EP120005	12/2/2011
	Operations Staff	Trip Coordinator	EP120010	12/1/2011
Federal Communications Commission.	Office Strategic Planning and Policy Analysis.	Special Advisor, Osp	FC120005	12/16/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
General Services Administration	Office of Congressional and Intergovernmental Affairs.	Legislative Policy Advisor	GS120003	12/12/2011
Department of Homeland Security	Office of the Under Secretary for Intelligence and Analysis.	Liaison for Community Partnership and Strategic Engagement.	DM120013	12/16/2011
Department of Housing and Urban Development.	Office of the Chief Human Capital Officer.	Director of Scheduling	DU120013	12/23/2011
	Office of Housing	Senior Policy Advisor	DU120015	12/23/2011
Department of the Interior	Secretary's Immediate Office	Special Assistant	DI120017	12/30/2011
	Secretary's Immediate Office	Special Assistant	DI120018	12/30/2011
	Secretary's Immediate Office	Deputy Director	DI120019	12/30/2011
Department of Justice	Executive Office for United States Attorneys.	Counsel	DJ120015	12/6/2011
Department of Labor	Office of the Assistant Secretary for Policy.	Senior Policy Advisor	DL120020	12/16/2011
National Endowment for the Arts	National Endowment for the Arts	Scheduler	NA120001	12/8/2011
National Transportation Safety Board.	Office of Board Members	Special Assistant	TB120002	12/19/2011
Office of Management and Budget.	Communications	Deputy Associate Director for Communications, Management.	BO120003	12/7/2011
	Office of the Director	Special Assistant	BO120004	12/23/2011
	Office of the Director	Confidential Assistant	BO120008	12/16/2011
Office of Personnel Management	Office of the Director	Director of Advance	PM120005	12/19/2011
	Office of Congressional and Legislative Affairs.	Senior Advisor for Learning and Mentoring.	PM120006	12/19/2011
	Office of the Director	Senior Advisor for Innovation	PM120007	12/19/2011
	Office of Congressional and Legislative Affairs.	Congressional Relations Officer	PM120008	12/22/2011
	Office of Communications and Public Liaison.	Communications Specialist	PM120009	12/21/2011
Securities and Exchange Commission.	Division of Corporation Finance	Confidential Assistant	SE120001	12/21/2011
Department of State	Office of the Deputy Secretary for Management and Resources.	Staff Assistant	DS120016	12/12/2011
	Bureau of Public Affairs	Staff Assistant	DS120019	12/16/2011
Department of Transportation	Assistant Secretary for Governmental Affairs.	Associate Director for Governmental Affairs.	DT120013	12/2/2011
	General Counsel	Associate General Counsel	DT120015	12/2/2011
Department of the Treasury	Under Secretary for Domestic Finance.	Senior Advisor	DY120029	12/5/2011
	Assistant Secretary (Public Affairs).	Special Assistant	DY120030	12/23/2011
	Assistant Secretary (Public Affairs).	Media Affairs Specialist	DY120031	12/7/2011
	Assistant Secretary (Public Affairs).	Spokesperson	DY120032	12/12/2011

The following Schedule C appointment authorities were revoked during December 2011.

Agency	Organization	Position title	Authorization No.	Vacate date
Commodity Futures Trading Commission.	Office of the Chairperson	Special Assistant to the Commissioner.	CT090011	12/3/2011
Department of Agriculture	Farm Service Agency	Confidential Assistant	DA100172	12/3/2011
Department of Agriculture	Office of the Under Secretary for Marketing and Regulatory Programs.	Chief of Staff	DA100166	12/30/2011
Department of Agriculture	Office of Under Secretary for Natural Resources and Environment.	Confidential Assistant to the Under Secretary.	DA090171	12/31/2011
Department of Commerce	Assistant Secretary for Market Access and Compliance.	Senior Advisor	DC090169	12/2/2011
Department of Commerce	Immediate Office	Special Assistant	DC110021	12/5/2011
Department of Commerce	Office of the Deputy Secretary	Special Assistant to the Deputy Secretary.	DC110107	12/30/2011
Department of Commerce	International Trade Administration.	Special Advisor	DC100124	12/31/2011

Agency	Organization	Position title	Authorization No.	Vacate date
Department of Education	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB110073	12/2/2011
Department of Education	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB110068	12/17/2011
Department of Education	Office of the Secretary	Confidential Assistant	DB110056	12/29/2011
Department of Education	Office of Communications and Outreach.	Director, Intergovernmental Affairs.	DB090078	12/31/2011
Department of Education	Office of the Under Secretary	Deputy Director of the White House Initiative on Tribal Colleges and Universities.	DB110022	12/31/2011
Department of Education	Office of Elementary and Secondary Education.	Confidential Assistant	DB110046	12/31/2011
Department of Energy	Office of Public Affairs	Deputy Press Secretary	DE090126	12/3/2011
Department of Energy	Office of Public Affairs	Director, Public Affairs	DE090119	12/4/2011
Department of Energy	Office of the Secretary	Special Assistant	DE100116	12/17/2011
Department of Health and Human Services.	Office of the Deputy Secretary	Regional Director, Kansas city, Missouri, Region VII.	DH100018	12/16/2011
Department of Homeland Security	Office of the Chief of Staff	Liaison for Community Partnership and Strategic Engagement.	DM110110	12/17/2011
Department of Homeland Security	Office of the Assistant Secretary for Intergovernmental Affairs.	Advisor to the Assistant Secretary for intergovernmental Affairs.	DM100196	12/30/2011
Department of Homeland Security	Office of the Chief of Staff	Advance Representative	DM090281	12/31/2011
Department of Housing and Urban Development.	Office of Congressional and Intergovernmental Relations.	Congressional Relations Specialist.	DU100102	12/3/2011
Department of Housing and Urban Development.	Office of Congressional and Intergovernmental Relations.	Intergovernmental and Public Engagement Liaison.	DU110007	12/3/2011
Department of Housing and Urban Development.	Office of the Administration	Special Assistant	DU100104	12/9/2011
Department of Housing and Urban Development.	Office of the Secretary	Director of Advance	DU100109	12/23/2011
Department of Justice	Office of the Deputy Attorney General.	Senior Counsel	DJ110095	12/3/2011
Department of Justice	Office of the Attorney General	Counsel	DJ090163	12/17/2011
Department of Justice	Antitrust Division	Senior Counsel	DJ110093	12/17/2011
Department of Justice	Office of Public Affairs	Press Assistant	DJ100122	12/31/2011
Department of the Army	Office of the General Counsel	Special Assistant to the General Counsel.	DW100026	12/17/2011
Department of the Interior	Secretary's Immediate Office	Special Assistant	DI120008	12/17/2011
Department of the Interior	Secretary's Immediate Office	Special Assistant	DI090145	12/19/2011
Department of the Interior	Assistant Secretary—Land and Minerals Management.	Special Assistant	DI100030	12/30/2011
Department of Transportation	General Counsel	Counselor to the General Counsel.	DT100047	12/3/2011
Department of Transportation	Administrator	Director for Governmental Affairs	DT100025	12/20/2011
Environmental Protection Agency	Operations Staff	Director, Operations Staff	EP100088	12/24/2011
General Services Administration	Office of Congressional and Intergovernmental Affairs.	Congressional Relations Specialist.	GS100034	12/17/2011
General Services Administration	Office of the Administrator	Special Assistant to the Chief of Staff.	GS100050	12/31/2011
National Endowment for the Humanities.	National Endowment for the Humanities.	Confidential Assistant	NH100003	12/31/2011
National Transportation Safety Board.	Office of Board Members	Special Assistant	TB100013	12/3/2011
Office of Personnel Management	Office of Personnel Management	Deputy Chief of Staff	PM090014	12/31/2011
Office of Personnel Management	Office of the Director	Deputy Chief of Staff	PM090018	12/31/2011
Office of Personnel Management	Office of the Director	Special Assistant	PM090026	12/31/2011
Office of Personnel Management	Office of the General Counsel	Attorney-Advisor	PM090025	12/31/2011
Office of Personnel Management	Office of Congressional Relations	Congressional Relations Officer	PM090031	12/31/2011
Office of Personnel Management	Office of Congressional Relations	Constituent Services Representative.	PM090035	12/31/2011
Office of the Secretary of Defense.	Office of the secretary	Advance officer	DD090291	12/9/2011
Office of the Secretary of Defense.	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant to the Assistant Secretary of Defense (Legislative Affairs).	DD090235	12/17/2011
Office of the Secretary of Defense.	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD100012	12/17/2011
Securities and Exchange Commission.	Office of the Chairman	Confidential Assistant	SE060005	12/31/2011
Securities and Exchange Commission.	Office of the Chairman	Confidential Assistant	SE100007	12/31/2011

Agency	Organization	Position title	Authorization No.	Vacate date
Small Business Administration	Office of Communications and Public Liaison.	Deputy Associate Administrator for Communications and Public Liaison.	SB090044	12/9/2011
Small Business Administration	Office of Government Contracting and Business Development.	Senior Advisor to the Associate Administrator for Government Contracting and Business Development.	SB110001	12/17/2011
Small Business Administration	Office of Policy and Strategic Planning.	Policy Associate	SB100031	12/28/2011
United States International Trade Commission.	Office of the Chairman	Staff Assistant	TC040001	12/3/2011
National Endowment for the Humanities.	.....	Scheduler	NA100002	12/23/2011
Office of the Secretary of Defense.	.....	Advance Officer	DD090291	12/9/2011
General Services Administration	.....	Special Assistant to the Chief of Staff.	GS100050	12/31/2011
Small Business Administration	Office of Communications and Public Liaison.	Deputy Associate Administration for Communication & Public Liaison.	SB090044	12/9/2011
State	Bureau of European and Eurasian Affairs.	Deputy Assistant Secretary	DS090276	12/27/2011
Office of the United States Trade Representative.	Office of the United States Trade Representative.	Personal Assistant to the United States Trade Representative.	.....	12/22/2011
Department of the Treasury	Assistant Secretary	Press Assistant	DY100100	12/9/2011
Department of the Treasury	Assistant Secretary	Spokesperson	DY090156	12/9/2011

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–9758 Filed 4–20–12; 8:45 am]

BILLING CODE 6325–39–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on May 30, 2012, at 9:30 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 25th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 25th Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: April 16, 2012.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2012–9631 Filed 4–20–12; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66818; File No. SR–NYSEArca–2012–33]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Peritus High Yield ETF

April 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 10, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the holdings of the Peritus High Yield ETF to achieve its investment objective to include equity securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposal to list and trade on the Exchange shares (''Shares'') of the Peritus High Yield ETF (''Fund'') under

NYSE Arca Equities Rule 8.600,[3] which governs the listing and trading of Managed Fund Shares.[4] The Shares are offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). Peritus I Asset Management, LLC is the Fund's sub-adviser (''Sub-Adviser'').

According to the Registration Statement and as stated in the Prior Release, the Fund's investment objective is to achieve high current income with a secondary goal of capital appreciation. The Sub-Adviser seeks to achieve the Fund's investment objective by selecting, among other investments, a focused portfolio of high yield debt securities, which include senior and subordinated corporate debt obligations (such as bonds, debentures, notes, and commercial paper). The Fund does not have any portfolio maturity limitation and may invest its assets from time to time primarily in instruments with short-term, medium-term, or long-term maturities. The Adviser represents that the investment objective of the Fund is not changing.

The Exchange proposes to reflect a change to the holdings of the Fund to achieve its investment objective to include equity securities. Thus, in addition to the investments referenced in the Prior Release, the Fund seeks to invest to a lesser extent (generally, no more than 10% of its net assets) in equity securities that the Sub-Adviser believes will yield high dividends.[6] According to the Registration Statement, equity securities in which the Fund may invest will include common stock, preferred stock, warrants, convertible securities, rights, master limited partnerships, depositary receipts (including American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs'')),[7] and real estate investment trusts. Depositary receipts held by the Fund may be sponsored or unsponsored, provided that no more than 10% of the Fund's net assets will be invested in unsponsored depositary receipts. With the exception of unsponsored depositary receipts, all equity securities held by the Fund will be listed and traded on U.S. national securities exchanges.

Pursuant to the terms of the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

As stated in the Prior Release, on each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its Web site the Disclosed Portfolio, which will include information relating to equity securities, among other investments, that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day. The intra-day, closing, and settlement prices of the portfolio securities, including any equity securities held by the Fund, are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services. All representations made in the Prior Release regarding the availability of information relating to the Shares, trading halts, trading rules, the Portfolio Indicative Value, and surveillance, among others, will continue to apply to trading in the Shares.

The Adviser represents that the proposed change to permit limited investment in equity securities, as described above, is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective. Specifically, by investing to a limited extent in equity securities, the Fund will have additional flexibility to achieve high current income through investments in dividend-paying equity securities, and to achieve the secondary goal of capital appreciation through possible price appreciation of such equity investments. Except for the change noted above, all other representations made in the Prior Release remain unchanged.[8] The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. No more than 10% of the Fund's net assets will be invested

[3] *See* Securities Exchange Act Release No. 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (''Prior Order''). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 63041 (October 5, 2010), 75 FR 62905 (October 13, 2010) (''Prior Notice'' and, together with the Prior Order, ''Prior Release'').

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On October 28, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[6] The change to the Fund's holdings to include equity securities will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement on Form N–1A, and shareholders will be notified of such change by means of such amendment.

[7] According to the Registration Statement, ADRs and GDRs are certificates evidencing ownership of shares of a foreign issuer. These certificates are issued by depositary banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions.

[8] *See* note 3, *supra.* All terms referenced but not defined herein are defined in the Prior Release.

[9] 15 U.S.C. 78f(b)(5).

in unsponsored depositary receipts. With the exception of unsponsored depositary receipts, all equity securities held by the Fund will be listed and traded on U.S. national securities exchanges.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the NAV per Share is calculated daily and that the NAV and the Disclosed Portfolio is made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), is disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information is available via the Consolidated Tape Association high-speed line. The intra-day, closing, and settlement prices of the portfolio securities, including any equity securities held by the Fund, are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares is subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Web site for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. In addition, as stated in the Prior Notice, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as stated in the Prior Notice, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Fund to invest immediately in equity securities that the Sub-Adviser believes will yield high dividends.[13]

With the exception of unsponsored depositary receipts in which the Fund may invest up to 10% of its net assets, all equity securities proposed to be held by the Fund would be listed and traded on U.S. national securities exchanges. In addition, the Fund will generally not invest more than 10% of its net assets in such equity securities. The Exchange represents that the limited investments in equity securities would be consistent with the Fund's investment objective, which is to achieve high current income and capital appreciation. Specifically, the Exchange represents that, by investing to a limited extent in equity securities, the Fund would have additional flexibility to achieve high current income through investments in dividend-paying equity securities and to achieve capital appreciation through possible price appreciation of such equity investments. Further, the Exchange represents that such investment objective is not changing, all other representations made in the Prior Release remain unchanged, and the Fund will continue to comply with all of the listing requirements under NYSE Arca Equities Rule 8.600. For the foregoing reasons, the Commission believes that the proposed change does not raise novel or unique regulatory issues that should delay the implementation of the Fund's proposed investments in certain equity securities. Therefore, the Commission waives the 30-day operative delay requirement because the rule change is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–33. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–33 and should be submitted on or before May 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9663 Filed 4–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66820; File No. SR–NYSEAmex–2012–22]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rule 107B To Add a Class of Supplemental Liquidity Providers That Are Registered as Market Makers at the Exchange

April 17, 2012.

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 April 4, 2012, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 107B to add a class of Supplemental Liquidity Providers (''SLP'') that are registered as market makers at the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 107B (''Rule 107B''), which currently operates on a pilot basis, to add a class of SLPs that are registered as market makers at the Exchange.

Background

Rule 107B, which was adopted as a pilot program in January 2010, established a new class of off-Floor market participants referred to as Supplemental Liquidity Providers or ''SLPs.''[3] Approved Exchange member organizations are eligible to be an SLP. SLPs supplement the liquidity provided by Designated Market Makers (''DMM''). SLPs have monthly quoting requirements that may qualify them to receive SLP rebates, which are larger than the general rebate available to non-SLP market participants.

The goal of the SLP program is to encourage participants to quote more often and to add displayed liquidity to the market. Thus, Rule 107B(a) requires that an SLP maintain a bid and/or an offer at the NBB or NBO averaging at least 5% of the trading day for each assigned security. Meeting this quoting requirement will enable an SLP to receive the basic SLP rebate (currently $0.0032 per executed share) on security-by-security basis and to maintain their SLP status.[4]

To qualify as an SLP under Rule 107B(c), a member organization is subject to a number of conditions, including adequate trading infrastructure to support SLP trading activity, quoting and volume performance that demonstrates an ability to meet the 5% average quoting requirement, and use of specified SLP mnemonics. In addition, the business unit of the member organization acting as an SLP must enter proprietary orders only and have adequate information barriers between the SLP unit and any member organization's customer,

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 5, 2010) (SR–NYSEAmex–2009–98) (establishing pilot program for market participants referred to as ''Supplemental Liquidity Providers'' or ''SLPs.''), which is based on the SLP program of the New York Stock Exchange, LLC (''NYSE''). The pilot is currently scheduled to end on July 31, 2012.

[4] The Exchange may, from time to time, change the amounts of the scaled SLP rebates by filing a proposed rule change under Rule 19b–4(f)(2) of the Act. 17 CFR 240.19b–4(f)(2).

research, and investment-banking business. Pursuant to Rule 107B(g)(2)(A), a DMM may also be an SLP, but not in the same securities in which it is registered as a DMM.

Rules 107B(d) and (e) currently set forth the application process and voluntary withdrawal process for SLPs. Rule 107B(f) sets forth how the quoting requirements are calculated. The assignment of SLP securities is set forth in Rule 107B(g). Rule 107B(h) specifies the entry of orders by SLPs, which may only be entered electronically from off the Floor of the Exchange from the proprietary account of the member organization.

Rule 107B(i) imposes certain non-regulatory penalties if an SLP fails to meet the quoting requirements. Specifically, an SLP would not be able to earn a rebate unless it maintained a quote at the NBB or NBO an average of 5% of the trading day. An SLP is also at risk of losing its SLP status if it fails to meet the 5% quoting requirement for three consecutive months. Rule 107B(j) specifies the process for the appeal of any non-regulatory penalties.

Proposed SLP Market Makers

The Exchange proposes to amend Rule 107B to add a category of SLPs that would be registered as market makers at the Exchange. As proposed, the term ''SLP'' would refer to member organizations that provide supplemental liquidity and there would be two classes of SLP. The existing SLP member organizations and associated requirements would continue unchanged and would be applicable to a new class of SLPs referred to as ''SLP-Prop.''

The Exchange proposes to add a new class of SLP, referred to as ''SLMM'', which would be registered as market makers at the Exchange. As proposed, the SLMMs would have differing qualification requirements and increased regulatory obligations as compared to SLP-Props, but would otherwise be subject to the existing SLP program. Because the Exchange proposes that the SLMMs would be subject to specified regulatory obligations, including the requirement to maintain a continuous two-sided quote, the Exchange believes that this class of registered market makers could be eligible for market maker treatment under federal rules,[5] such as the close-out requirements for fail-to-deliver positions applicable to market makers under Rule 204 of Regulation SHO.[6]

As with the SLP program in general, SLMMs are intended to supplement the liquidity provided by DMMs, and are not intended to replace DMMs.[7] The Exchange proposes to add SLMMs in order to assist in the maintenance of a fair and orderly market, as reasonably practicable. While all securities that trade at the Exchange are required to be assigned to a DMM, not all securities would be required to be assigned to an SLMM, which is how the SLP program operates today. The Exchange believes that the proposed rule change would expand the number of member organizations eligible to participate in the SLP program. In particular, it would enable member organizations that are registered as market makers on other exchanges that are not interested in joining the existing proprietary-only SLP program to join the SLP program.

As set forth in the proposed amendment to Rule 107B(a), an SLP can choose to be either an SLP-Prop or an SLMM. As proposed, SLMMs would have different qualification requirements, specified regulatory obligations, expanded entry of order requirements, and a security-by-security withdrawal ability. SLP-Props and SLMMs would be subject to the same application and overall program withdrawal process, quoting requirements, manner by which SLP securities are assigned, and non-regulatory penalties. The Exchange does not propose to amend those aspects of the SLP program that would be applicable to both SLP-Props and SLMMs.[8] For these purposes, the rule would continue to refer to ''SLPs,'' which refers to both SLP-Prop and SLMM.

As proposed, the qualification requirements specified in Rule 107B(c) would be applicable and unchanged to SLP-Props. The Exchange proposes to add Rule 107B(d) to specify the qualification requirements of SLMMs, and re-number the rest of Rule 107B accordingly. As proposed, to be approved, an SLMM would need to meet the qualification requirements currently set forth in Rule 107B(c)(1), and (3)–(5), relating to requirements for adequate technology and performance history.

If approved as an SLMM, an SLMM must meet specified regulatory obligations, which are set forth in proposed Rule 107B(d). Because these are regulatory obligations, failure to comply with these obligations could result in disciplinary action. First, pursuant to proposed Rule 107B(d)(1), the SLMM must maintain a continuous two-sided quotation in those securities in which the SLMM is registered to trade as an SLP (''Two-Sided Obligation''). As proposed, the Two-Sided Obligation applicable to SLMMs would be virtually identical to the market-maker two-sided obligations adopted by the equities markets in 2010.[9] Second, pursuant to proposed Rule 107B(d)(2), the SLMM would be required to maintain net capital in accordance with the provisions of Rule 15c3–1 under the Act, which specifies the capital requirements for market makers.[10] Finally, pursuant to proposed Rule 107B(d)(3), the SLMM would be required to maintain unique mnemonics specifically dedicated to SLMM activity. Use of these unique mnemonics will enable SLMMs to meet their requirement under proposed Rule 107B(d)(1)(A) to identify their market-making activity to the Exchange. As proposed, such mnemonics may not be used for trading in securities other than SLP Securities assigned to the SLMM.[11]

[5] Among other things, a ''market maker'' is defined under the Securities Exchange Act of 1934 (the ''Act'') as ''any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communication system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.'' 15 U.S.C. 78c(a)(38).

[6] 17 CFR 242.204(a)(3).

[7] The Exchange notes that NYSE Arca, Inc. (''NYSE Arca'') has two classes of market makers: Lead market makers and regular market makers. The proposed SLMM class would have obligations similar to those applicable to NYSE Arca regular market makers.

[8] As part of the application process, a prospective SLP would make an election of whether it is seeking to be an SLP-Prop or SLMM. Based on this election, the Exchange would review the application for whether the SLP applicant meets the qualification requirements of Rule 107B(c) or proposed Rule 107B(d), as applicable. Current SLPs may also apply with the Exchange to convert to be an SLMM, provided that they meet proposed Rule 107B(d) qualification requirements.

[9] *See* Securities Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR–BATS–2010–025; SR–BX–2010–66; SR–CBOE–2010–087; SR–CHX–2010–22; SR–FINRA–2010–049; SR–NASDAQ–2010–115; SR–NSX–2010–12; SR–NYSE–2010–69; SR–NYSEAmex–2010–96; and SR–NYSEArca–2010–83) (order approving enhanced quoting requirements for market makers).

[10] 17 CFR 240.15c3–1. For purposes of that rule, the term ''market maker'' is defined as ''a dealer who, with respect to a particular security, (i) Regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.'' 17 CFR 240.15c3–1(c)(8).

[11] Because of the regulatory obligations associated with the SLMM Two-Sided Obligations, the Exchange believes that requiring dedicated, unique mnemonics for SLMM trading activity will enable SLMMs to comply with the proposed Rule 107B(d)(1)(A) requirement to identify such market-making quotes to the Exchange. The use of unique mnemonics will also facilitate the review by FINRA, on behalf of the Exchange and NYSE

Continued

Pursuant to Rule 107B(c)(6), SLPs must currently maintain adequate information barriers between the SLP unit and the member organization's customer, research and investment-banking business. This requirement ensures that the orders submitted by SLPs are proprietary only, and are not related to any customer-facing business, including potentially market-making businesses. The Exchange proposes to maintain this requirement for SLP-Props. However, because market making sometimes involves a customer-facing business, the Exchange does not believe that the information barrier requirement is necessary for the proposed SLMMs.[12] Accordingly, the Exchange proposes that this qualification requirement be applicable only to the SLP-Prop class of SLPs.

As a related matter, the Exchange proposes to amend Rule 107B(h) (as proposed Rule 107B(i)) to modify the entry of order requirements. SLP-Prop would continue to be required to enter proprietary orders only. As proposed, SLMMs would similarly be required to enter orders for their own account, however, they could be entered in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person. Accordingly, an SLMM could be submitting SLMM quotes to the Exchange on behalf of customers, or other unaffiliated or affiliated persons.

The Exchange proposes to add an additional ability for SLMMs to voluntarily withdraw from registration as a market maker in a particular security. In proposed Rule 107B(f)(2), the Exchange proposes that an SLMM may withdraw its registration in a security by giving written notice to the SLP Liaison Committee and FINRA. As proposed, the Exchange may require a certain minimum notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. An SLMM that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action.

The Exchange believes that the security-by-security withdrawal provision will enable SLMMs to comply with legal or regulatory requirements that may conflict with meeting the SLMM requirements. For example, permitting an SLMM to withdraw its quotations may enable it to meet otherwise conflicting obligations under Rule 104 of Regulation M.[13] In particular, because the Exchange will always have a DMM assigned to a security, the Exchange believes that having a flexible policy toward withdrawal of registration in a security will not harm investors. Moreover, the proposed rule is identical to that of another exchange.[14]

The final proposed change to the SLP rule is to add to Rule 107B(g) (as proposed Rule 107B(h)) that an SLP-Prop may not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa. The Exchange believes that under the SLP program, a member organization should be either an SLP-Prop or SLMM. However, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units. Provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.

The Exchange proposes to implement the changes to the SLP program by adding the SLMM class effective on the first day of the month following Commission approval of this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that adding an additional registered market maker program to the Exchange will promote just and equitable principles of trade as it could potentially expand the number of market participants trading at the Exchange that would be required to assist in the maintenance of a fair and orderly market, as reasonably practicable. In particular, the current SLP program is limited solely to member organizations that trade for their own account, and that are walled off from any customer-facing business. With the proposed rule change, additional market participants, including member organizations that are registered as market makers on other exchanges that engage in a customer-facing business, would be able to participate in the SLP program.

As noted above, the Exchange would continue to require that a DMM be registered in every security at the Exchange, and similar to NYSE Arca's market maker program, which has two classes of market maker, the SLMMs would provide supplemental liquidity in addition to the DMMs. Because the proposed SLMMs would be required to meet the Two-Sided Obligation applicable to all equities market makers, the Exchange believes that the proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the number of market participants that are required to maintain a continuous two-sided quotation in the securities in which they are registered. The Exchange further believes that adding additional registered market makers would protect investors and the public interest by providing additional sources of liquidity for trading.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of the Act because the proposed requirements for the SLMMs are based on existing, approved requirements for registered market makers on other exchanges. In addition to the Two-Sided Obligation, the proposed SLMMs would also be required to assist in the maintenance of a fair and orderly market, as reasonably practicable, and maintain net capital consistent with federal requirements for market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

Regulation, Inc., of SLMM compliance with the Two-Sided Obligation.

[12] The Exchange notes that other exchanges do not require information barriers for equities market makers. *See, e.g.,* The NASDAQ Stock Market LLC (''Nasdaq'') Rules Series 4600 (Requirements for Nasdaq Market Makers and Other Nasdaq Market Center Participants) and NYSE Arca Equities Rule 7, Section 2 (Market Makers).

[13] 17 CFR 242.104 (setting forth restrictions on entering stabilizing bids or penalty bids in connection with an offering of any security).

[14] The proposed rule is based on BATS Exchange, Inc. (''BATS'') Rule 11.7(b). As noted below, a number of self-regulatory organizations have similar provisions, with varying language.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2012–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2012–22. 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 publicly available. All submissions should refer to File Number SR–NYSEAmex–2012–22 and should be submitted on or before May 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9628 Filed 4–20–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66821; File No. SR–NYSE–2012–10]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 107B To Add a Class of Supplemental Liquidity Providers That Are Registered as Market Makers at the Exchange

April 17, 2012.

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 April 4, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 107B to add a class of Supplemental Liquidity Providers (''SLP'') that are registered as market makers at the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 107B, which currently operates on a pilot basis, to add a class of SLPs that are registered as market makers at the Exchange.

Background

Rule 107B, which was adopted as a pilot program in October 2008, established a new class of off-Floor market participants referred to as Supplemental Liquidity Providers or ''SLPs.''[3] Approved Exchange member organizations are eligible to be an SLP. SLPs supplement the liquidity provided by Designated Market Makers (''DMM''). SLPs have monthly quoting requirements that may qualify them to receive SLP rebates, which are larger than the general rebate available to non-SLP market participants.

The goal of the SLP program is to encourage participants to quote more often and to add displayed liquidity to the market. Thus, Rule 107B(a) requires that an SLP maintain a bid and/or an offer at the NBB or NBO averaging at

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing pilot program for market participants referred to as ''Supplemental Liquidity Providers'' or ''SLPs.''). The pilot is currently scheduled to end on July 31, 2012.

least 10% of the trading day for each assigned security. In addition, an SLP must provide an average daily volume (''ADV'') of more than 10 million shares for all assigned SLP securities on a monthly basis. Meeting this volume requirement will enable an SLP to receive the basic SLP rebate (currently $0.0020 per executed share) on security-by-security basis and to maintain their SLP status.[4]

To qualify as an SLP under Rule 107B(c), a member organization is subject to a number of conditions, including adequate trading infrastructure to support SLP trading activity, quoting and volume performance that demonstrates an ability to meet the 10% ADV requirement, and use of specified SLP mnemonics. In addition, the business unit of the member organization acting as an SLP must enter proprietary orders only and have adequate information barriers between the SLP unit and any member organization's customer, research, and investment-banking business. Pursuant to Rule 107B(h)(2)(A), a DMM may also be an SLP, but not in the same securities in which it is registered as a DMM.

Rule 107B(d) and (e) currently set forth the application process and voluntary withdrawal process for SLPs. Rule 107B(f) sets forth how the quoting requirements are calculated and Rule 107B(g) sets forth how the monthly volume requirement is calculated. The assignment of SLP securities is set forth in Rule 107B(h). Rule 107B(i) specifies the entry of orders by SLPs, which may only be entered electronically from off the Floor of the Exchange from the proprietary account of the member organization.

Rule 107B(j) imposes certain non-regulatory penalties if an SLP fails to meet the quoting requirements. Specifically, an SLP would not be able to earn a rebate unless it maintained a quote at the NBB or NBO an average of 10% of the trading day. Pursuant to Rule 107B(j)(1)(A), to be eligible for a financial rebate for an SLP security for which the SLP has met the 10% quoting requirement, the SLP would first need to meet the minimum 10 million share ADV requirement for all assigned securities. If the SLP fails to meet the volume requirement, it would not be eligible for any rebates, notwithstanding that it may have met the quoting requirement for one or more assigned SLP securities. If the SLP meets the volume requirement for all assigned securities, but does not meet the 10% quoting requirement in any securities, the SLP would not receive any financial rebates. An SLP is also at risk of losing its SLP status if it fails to meet the 10% quoting requirement for three consecutive months. Rule 107B(k) specifies the process for the appeal of any non-regulatory penalties.

Proposed SLP Market Makers

The Exchange proposes to amend Rule 107B to add a category of SLPs that would be registered as market makers at the Exchange. As proposed, the term ''SLP'' would refer to member organizations that provide supplemental liquidity and there would be two classes of SLP. The existing SLP member organizations and associated requirements would continue unchanged and would be applicable to a new class of SLPs referred to as ''SLP-Prop.''

The Exchange proposes to add a new class of SLP, referred to as ''SLMM'', which would be registered as market makers at the Exchange. As proposed, the SLMMs would have differing qualification requirements and increased regulatory obligations as compared to SLP-Props, but would otherwise be subject to the existing SLP program. Because the Exchange proposes that the SLMMs would be subject to specified regulatory obligations, including the requirement to maintain a continuous two-sided quote, the Exchange believes that this class of registered market makers could be eligible for market maker treatment under federal rules,[5] such as the close-out requirements for fail-to-deliver positions applicable to market makers under Rule 204 of Regulation SHO.[6]

As with the SLP program in general, SLMMs are intended to supplement the liquidity provided by DMMs, and are not intended to replace DMMs.[7] The Exchange proposes to add SLMMs in order to assist in the maintenance of a fair and orderly market, as reasonably practicable. While all securities that trade at the Exchange are required to be assigned to a DMM, not all securities would be required to be assigned to an SLMM, which is how the SLP program operates today. The Exchange believes that the proposed rule change would expand the number of member organizations eligible to participate in the SLP program. In particular, it would enable member organizations that are registered as market makers on other exchanges that are not interested in joining the existing proprietary-only SLP program to join the SLP program.

As set forth in the proposed amendment to Rule 107B(a), an SLP can choose to be either an SLP-Prop or an SLMM. As proposed, SLMMs would have different qualification requirements, specified regulatory obligations, expanded entry of order requirements, and a security-by-security withdrawal ability. SLP-Props and SLMMs would be subject to the same application and overall program withdrawal process, ADV and quoting requirements, manner by which SLP securities are assigned, and non-regulatory penalties. The Exchange does not propose to amend those aspects of the SLP program that would be applicable to both SLP-Props and SLMMs.[8] For these purposes, the rule would continue to refer to ''SLPs,'' which refers to both SLP-Prop and SLMM.

As proposed, the qualification requirements specified in Rule 107B(c) would be applicable and unchanged to SLP-Props. The Exchange proposes to add Rule 107B(d) to specify the qualification requirements of SLMMs, and re-number the rest of Rule 107B accordingly. As proposed, to be approved, an SLMM would need to meet the qualification requirements currently set forth in Rule 107B(c)(1), and (3)–(5), relating to requirements for adequate technology and performance history.

If approved as an SLMM, an SLMM must meet specified regulatory obligations, which are set forth in proposed Rule 107B(d). Because these are regulatory obligations, failure to comply with these obligations could result in disciplinary action. First, pursuant to proposed Rule 107B(d)(1), the SLMM must maintain a continuous two-sided quotation in those securities in which the SLMM is registered to

[4] The Exchange may, from time to time, change the amounts of the scaled SLP rebates by filing a proposed rule change under Rule 19b–4(f)(2) of the Act. 17 CFR 240.19b–4(f)(2).

[5] Among other things, a ''market maker'' is defined under the Securities Exchange Act of 1934 (the ''Act'') as ''any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communication system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.'' 15 U.S.C. 78c(a)(38).

[6] 17 CFR 242.204(a)(3).

[7] The Exchange notes that NYSE Arca, Inc. (''NYSE Arca'') has two classes of market makers: lead market makers and regular market makers. The proposed SLMM class would have obligations similar to those applicable to NYSE Arca regular market makers.

[8] As part of the application process, a prospective SLP would make an election of whether it is seeking to be an SLP-Prop or SLMM. Based on this election, the Exchange would review the application for whether the SLP applicant meets the qualification requirements of Rule 107B(c) or proposed Rule 107B(d), as applicable. Current SLPs may also apply with the Exchange to convert to be an SLMM, provided that they meet proposed Rule 107B(d) qualification requirements.

trade as an SLP (''Two-Sided Obligation''). As proposed, the Two-Sided Obligation applicable to SLMMs would be virtually identical to the market-maker two-sided obligations adopted by the equities markets in 2010.[9] Second, pursuant to proposed Rule 107B(d)(2), the SLMM would be required to maintain net capital in accordance with the provisions of Rule 15c3–1 under the Act, which specifies the capital requirements for market makers.[10] Finally, pursuant to proposed Rule 107B(d)(3), the SLMM would be required to maintain unique mnemonics specifically dedicated to SLMM activity. Use of these unique mnemonics will enable SLMMs to meet their requirement under proposed Rule 107B(d)(1)(A) to identify their market-making activity to the Exchange. As proposed, such mnemonics may not be used for trading in securities other than SLP Securities assigned to the SLMM.[11]

Pursuant to Rule 107B(c)(6), SLPs must currently maintain adequate information barriers between the SLP unit and the member organization's customer, research and investment-banking business. This requirement ensures that the orders submitted by SLPs are proprietary only, and are not related to any customer-facing business, including potentially market-making businesses. The Exchange proposes to maintain this requirement for SLP-Props. However, because market making sometimes involves a customer-facing business, the Exchange does not believe that the information barrier requirement is necessary for the proposed SLMMs.[12] Accordingly, the Exchange proposes that this qualification requirement be applicable only to the SLP-Prop class of SLPs.

As a related matter, the Exchange proposes to amend Rule 107B(i) (as proposed Rule 107B(j)) to modify the entry of order requirements. SLP-Prop would continue to be required to enter proprietary orders only. As proposed, SLMMs would similarly be required to enter orders for their own account, however, they could be entered in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person. Accordingly, an SLMM could be submitting SLMM quotes to the Exchange on behalf of customers, or other unaffiliated or affiliated persons.

The Exchange proposes to add an additional ability for SLMMs to voluntarily withdraw from registration as a market maker in a particular security. In proposed Rule 107B(f)(2), the Exchange proposes that an SLMM may withdraw its registration in a security by giving written notice to the SLP Liaison Committee and FINRA. As proposed, the Exchange may require a certain minimum notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. An SLMM that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action.

The Exchange believes that the security-by-security withdrawal provision will enable SLMMs to comply with legal or regulatory requirements that may conflict with meeting the SLMM requirements. For example, permitting an SLMM to withdraw its quotations may enable it to meet otherwise conflicting obligations under Rule 104 of Regulation M.[13] In particular, because the Exchange will always have a DMM assigned to a security, the Exchange believes that having a flexible policy toward withdrawal of registration in a security will not harm investors. Moreover, the proposed rule is identical to that of another exchange.[14]

The final proposed change to the SLP rule is to add to Rule 107B(h) (as proposed Rule 107B(i)) that an SLP-Prop may not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa. The Exchange believes that under the SLP program, a member organization should be either an SLP-Prop or SLMM. However, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units. Provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.

The Exchange proposes to implement the changes to the SLP program by adding the SLMM class effective on the first day of the month following Commission approval of this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that adding an additional registered market maker program to the Exchange will promote just and equitable principles of trade as it could potentially expand the number of market participants trading at the Exchange that would be required to assist in the maintenance of a fair and orderly market, as reasonably practicable. In particular, the current SLP program is limited solely to member organizations that trade for their own account, and that are walled off from any customer-facing business. With the proposed rule change, additional market participants, including member organizations that are registered as market makers on other exchanges that engage in a customer-

[9] *See* Securities Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR–BATS–2010–025; SR–BX–2010–66; SR–CBOE–2010–087; SR–CHX–2010–22; SR–FINRA–2010–049; SR–NASDAQ–2010–115; SR–NSX–2010–12; SR–NYSE–2010–69; SR–NYSEAmex–2010–96; and SR–NYSEArca–2010–83) (order approving enhanced quoting requirements for market makers).

[10] 17 CFR 240.15c3–1. For purposes of that rule, the term ''market maker'' is defined as ''a dealer who, with respect to a particular security, (i) Regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.'' 17 CFR 240.15c3–1(c)(8).

[11] Because of the regulatory obligations associated with the SLMM Two-Sided Obligations, the Exchange believes that requiring dedicated, unique mnemonics for SLMM trading activity will enable SLMMs to comply with the proposed Rule 107B(d)(1)(A) requirement to identify such market-making quotes to the Exchange. The use of unique mnemonics will also facilitate the review by FINRA, on behalf of the Exchange and NYSE Regulation, Inc., of SLMM compliance with the Two-Sided Obligation.

[12] The Exchange notes that other exchanges do not require information barriers for equities market makers. *See, e.g.,* The NASDAQ Stock Market LLC (''Nasdaq'') Rules Series 4600 (Requirements for Nasdaq Market Makers and Other Nasdaq Market Center Participants) and NYSE Arca Equities Rule 7, Section 2 (Market Makers).

[13] 17 CFR 242.104 (setting forth restrictions on entering stabilizing bids or penalty bids in connection with an offering of any security).

[14] The proposed rule is based on BATS Exchange, Inc. (''BATS'') Rule 11.7(b). As noted below, a number of self-regulatory organizations have similar provisions, with varying language.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

facing business, would be able to participate in the SLP program.

As noted above, the Exchange would continue to require that a DMM be registered in every security at the Exchange, and similar to NYSE Arca's market maker program, which has two classes of market maker, the SLMMs would provide supplemental liquidity in addition to the DMMs. Because the proposed SLMMs would be required to meet the Two-Sided Obligation applicable to all equities market makers, the Exchange believes that the proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the number of market participants that are required to maintain a continuous two-sided quotation in the securities in which they are registered. The Exchange further believes that adding additional registered market makers would protect investors and the public interest by providing additional sources of liquidity for trading.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of the Act because the proposed requirements for the SLMMs are based on existing, approved requirements for registered market makers on other exchanges. In addition to the Two-Sided Obligation, the proposed SLMMs would also be required to assist in the maintenance of a fair and orderly market, as reasonably practicable, and maintain net capital consistent with federal requirements for market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–10. 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 publicly available. All submissions should refer to File Number SR–NYSE–2012–10 and should be submitted on or before May 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9629 Filed 4–20–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Privacy Act of 1974; System of Records

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice of Proposed Revisions to Existing System of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the U.S. Office of Special Counsel (OSC) is publishing notice of proposed revisions to its system of records entitled ''OSC/GOVT-1—OSC Complaint, Litigation, and Political Activity Files,'' last published in full in the **Federal Register** on July 12, 2001 (66 FR 36611), and corrected on October 5, 2001 (66 FR 51095). OSC proposes to modify this system of records to make necessary revisions to include:

—Revising the title of the system to clarify that Disclosure Unit records are included;
—Modifications to update statutory coverage, OSC procedures, and OSC's administrative changes;
—Revisions to some existing routine uses to clarify coverage and add necessary disclosures;
—Adding new routine uses; and
—Making plain language or technical revisions throughout.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments within 30 days of this notice. In accordance with 5 U.S.C. 552a(r), OSC is providing a report to OMB and the Congress.

DATES: Comments should be received on or before May 23, 2012. The proposed revisions to the system of records will become effective without further notice on May 23, 2012, unless OSC determines otherwise based on comments received.

ADDRESSES: Written comments may be sent to Office of General Counsel, U.S. Office of Special Counsel, by mail at 1730 M Street NW., Suite 218, Washington, DC 20036–4505; or by fax to (202) 653–5151.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Associate General Counsel, U.S. Office of Special Counsel, at (202) 254–3600, or write to the address above.

SUPPLEMENTARY INFORMATION:

OSC proposes the following revisions to its Privacy Act system of records ''OSC/GOVT-1—OSC Complaint, Litigation, and Political Activity Files.''

The system name has been revised from ''OSC/GOVT-1—OSC Complaint, Litigation, and Political Activity Files'' to ''OSC/GOVT-1, OSC Complaint, Litigation, Political Activity, and Disclosure Files'' to clarify that this system includes Disclosure Unit records. In addition, the system location and system manager address have been updated.

The categories of individuals covered have been modified to reflect current coverage. The description of categories of records in the system has been revised to more clearly describe the system's records by including specific examples and descriptions.

The statement of authorities for maintenance of the system has been updated to add the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320), codified at 5 U.S.C. 571–574, and USERRA demonstration projects under Sec. 204 of the Veterans Benefits Improvement Act of 2004 (Pub. L. 108–454), and Sec. 105 of the Veterans Benefits Act of 2010 (Pub. L. 111–175), codified at 38 U.S.C. 4301 note. A purposes section has been added.

Revisions to the existing routine uses include the following:

(1) Routine use ''g'' has been revised: To clarify that disclosures under this provision include those disclosures required under 5 U.S.C. 1213; and to clarify that disclosures may be made as part of resolving an allegation by settlement or otherwise;

(2) Routine use ''h'' has been revised to add disclosures where necessary to obtain information relevant to an agency decision pertaining to the classification of a job;

(3) Routine use ''k'' has been revised to clarify that all functions authorized by laws, regulations, and policies governing National Archives and Records Administration (NARA) operations and OSC records management responsibilities are included;

(4) Routine use ''m'' has been revised to add that a disclosure may be made to the Department of Justice (DOJ) in order for OSC to request that DOJ represent an agency employee. In addition, routine uses ''m'' and ''n'' have been revised for clarification purposes;

(5) Routine use ''p'' has been revised to clarify that disclosures under this provision include notifying an Office of Inspector General (OIG) (or comparable office) of the disposition of matters referred by such office to the OSC;

(6) Routine use ''r'' has been revised to state that the reference to litigation under 38 U.S.C. 4324 includes ''possible litigation,'' and to add disclosures pertaining to a USERRA demonstration project, or to mediation by the U.S. Department of Defense, Employer Support of the Guard and Reserve.

Nine routine uses have been added. They are:

(1) Routine use ''s'' to disclose records, when OSC has agreed to represent a USERRA complainant under 38 U.S.C. 4324 (a)(2)(A), from the corresponding USERRA investigative file to the relevant USERRA litigation file, and to disclose records from the relevant USERRA litigation file to the USERRA complainant;

(2) Routine use ''t'' to disclose information to agency contractors, experts, consultants, detailees, or non-OSC employees performing or working on a contract, service, or other activity related to the system of records, when necessary to accomplish an agency function related to the system;

(3) Routine use ''u'' to make lists and reports available to the public as required by 5 U.S.C. 1219;

(4) Routine use ''v'' to make disclosures that may be needed in the case of a data breach, pursuant to OMB Memorandum M–07–16, ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information;

(5) Routine use ''w'' for disclosures to other agencies with subject matter expertise when needed;

(6) Routine use ''x'' for disclosures to appropriate authorities when violations or potential violations of law or regulation are indicated, and as required under 28 U.S.C. 535 and 5 U.S.C. 1214;

(7) Routine use ''y'' for necessary disclosures to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency;

(8) Routine use ''z'' for disclosures to DOJ and the Federal Bureau of Investigation required for inclusion in the National Instant Criminal Background Check System (NICS), under the reporting requirements of the Brady Handgun Violence Prevention Act, as amended by the NICS Improvement Amendments Act of 2007; and

(9) Routine use ''aa'' for disclosures that may be required when processing certain FOIA or Privacy Act matters.

The description of retrievability has been modified to reflect actual practices. The description of retention periods has been updated to reflect OSC's current record retention practice. OSC is revising its record retention schedule in consultation with NARA. Records are maintained for the current or draft proposed retention period, whichever is longer.

The system manager contact information has been updated to reflect administrative changes within the agency.

The notification procedure has been revised to conform with the revisions to OSC's regulations implementing the Privacy Act, published October 4, 2007 (72 FR 56617). The contact information has been changed to OSC's Privacy Act Officer, rather than the system manager, to reflect current practice. The point-of-contact for contesting records has also been similarly revised. Reference to OSC's Privacy Act regulations at 5 CFR part 1830 has been included in the records access and contesting records sections for consistency.

The description of record source categories has been revised to clarify that disclosures of information filed with OSC are included.

The description of exemptions claimed for the system has been updated to reflect the revisions to OSC's regulations implementing the Privacy Act, published October 4, 2007 (72 FR 56617).

Finally, several ''plain language'' edits have been made throughout the notice.

The revised OSC/GOVT-1 reads:

OSC/GOVT-1

SYSTEM NAME:

OSC/GOVT-1, OSC Complaint, Litigation, Political Activity, and Disclosure Files.

SYSTEM LOCATION:

Program offices and the Document Control Branch, U.S. Office of Special Counsel (OSC), 1730 M Street NW., Suite 218, Washington, DC 20036–4505, and records which may be located at other agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The principal categories of individuals covered by the system are persons filing allegations of prohibited personnel practices or other prohibited activities; persons identified as engaging or participating in improper political activity; persons filing disclosures of alleged wrongdoing by federal agencies;

persons requesting advisory opinions on political activity, or third party subjects of such advisory opinions; persons charged by OSC in disciplinary action complaints filed by OSC with the Merit Systems Protection Board (MSPB); persons on whose behalf OSC seeks corrective action before the MSPB; persons filing allegations of wrongdoing in Uniformed Services Employment and Reemployment Rights Act (USERRA) matters referred or transferred to OSC; plaintiffs seeking remedies or discovery against OSC in litigation or administrative claims; and persons filing requests for information or administrative appeals under the Freedom of Information Act (FOIA) or the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The principal types of records in the system are complaints alleging prohibited personnel practices, improper political activity, or other violations of law or regulation; disclosures of information about alleged wrongdoing by federal agencies; written requests that result in formal advisory opinions on political activity; allegations of USERRA violations; litigation documents served on or filed by OSC in litigation; correspondence with persons (or their representatives) filing such complaints, disclosures, requests, or litigation; communications with other agencies, entities, or individuals referring matters to OSC for review or investigation; exhibits and other documentation received from filers and requesters, governmental entities or third parties; interview records, including notes, summaries, or transcripts; affidavits; reports or other summaries of investigation; factual and legal summaries or analyses; administrative determinations; referrals to other governmental entities for appropriate action; records created or compiled in connection with litigation by or against OSC, or pertinent to OSC operations; records relating to attempts to resolve matters as part of OSC's Alternative Dispute Resolution (ADR) Program; records of or related to OSC's FOIA and Privacy Act Program, including but not limited to, requests, appeals, and decisions; information about complaints, disclosures, requests and litigation maintained in OSC's electronic case tracking system; and other correspondence and documents created or obtained in the performance of OSC functions under 5 U.S.C. 1211–1221, 1501–1508, and 7321–7326; 5 U.S.C. 552 and 552a; 38 U.S.C. 4324, and other applicable law, regulation, or OSC memoranda of understanding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 571–584, 1211–1221, 1501–1508, and 7321–7326; 38 U.S.C. 4324, Sec. 204 of the Veterans Benefits Improvement Act of 2004, Public Law 108–454 and Sec. 105 of the Veterans' Benefits Act of 2010, Public Law 111–175, both codified at 38 U.S.C. 4301 note.

PURPOSES:

Records are maintained to: (1) Document how each matter at OSC was handled; (2) provide a resource for consistency in interpretation and application of the law; and (3) allow for statistical reports and analysis of matters processed at OSC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses permit OSC to:

a. Disclose the fact that an allegation of prohibited personnel practices or other prohibited activity has been filed;

b. Disclose information to the Office of Personnel Management (OPM) pursuant to Civil Service Rule 5.4 (5 CFR 5.4), or obtain an advisory opinion concerning the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations;

c. Disclose to the Equal Employment Opportunity Commission or any other agency or office concerned with the enforcement of the anti-discrimination laws, information concerning any allegation or complaint of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition;

d. Disclose information to the MSPB or the President upon the filing or referral of a disciplinary action complaint against an employee on the basis of an OSC investigation;

e. Disclose information to an agency, the MSPB, OPM, or the President, under 5 U.S.C. 1214, the results of investigations which disclose reasonable grounds to believe a prohibited personnel practice has occurred, exists, or is to be taken;

f. Disclose information to Congress in connection with the submission of an annual report on activities of the Special Counsel;

g. Disclose information:

1. To any agency or person, regarding allegations of prohibited personnel practices or other prohibited activity, or prohibited political activity filed against an agency or any employee thereof, for the purpose of conducting an investigation; resolving an allegation before OSC by settlement or otherwise; or giving notice of the status or outcome of an investigation;

2. To an agency, Office of Inspector General, complainant (whistleblower), the President, Congressional Committees, or the National Security Advisor regarding violations of law, rule, or regulation, or other disclosures under 5 U.S.C. 1213 for the purposes of transmitting information or reports as required under that statute; or in giving notice of the status or outcome of a review;

h. Disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning: the hiring or retention of an employee; the issuance of a security clearance; the classification of a job; the conducting of a security or suitability investigation of an individual; the letting of a contract; or the issuance of a license, grant, or other benefit;

i. Disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A–19;

j. Provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office (made at the written request of that individual);

k. Furnish information to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906, or other functions authorized by laws, regulations, and policies governing NARA operations and OSC records management responsibilities;

l. Produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies;

m. Disclose records to the Department of Justice (DOJ) when:

1. Any of the following entities or individuals is a party to litigation or has an interest in litigation:

A. The OSC;

B. Any employee of the OSC in his or her official capacity;

C. Any employee of the OSC in his or her individual capacity whom DOJ has been asked or agreed to represent; or

D. The United States, where the OSC determines that the OSC will be affected by the litigation; and

2. When the OSC determines that use of the records by the DOJ is relevant and necessary to the litigation and that the

disclosure to DOJ of the information contained in the records is a use compatible with the purpose for which the records were collected;

n. Disclose records in a proceeding before a court or adjudicative body, before which the OSC is authorized to appear, when:

1. Any of the following entities or individuals is a party to, or has an interest in the proceedings:

A. The OSC;

B. Any employee of the OSC in his or her official capacity;

C. Any employee of the OSC in his or her individual capacity whom OSC has agreed to represent; or

D. The United States, where the OSC determines that the OSC will be affected by the proceedings; and

2. When the OSC determines that use of the records is relevant and necessary to the proceedings and that the disclosure in such proceedings is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

o. Disclose information to the MSPB to aid in the conduct of special studies by the Board under 5 U.S.C. 1204(a)(3);

p. Disclose information to an Office of Inspector General (OIG) or comparable internal inspection, audit, or oversight office of an agency for the purpose of facilitating the coordination and conduct of investigations and review of allegations within the purview of both the OSC and the agency OIG or comparable office; or in notifying an OIG (or comparable office) of the disposition of matters referred by the OIG (or comparable office) to the OSC;

q. Disclose information to the news media and the public when (1) The matter under investigation has become public knowledge, (2) the Special Counsel determines that disclosure is necessary to preserve confidence in the integrity of the OSC investigative process or is necessary to demonstrate the accountability of OSC officers, employees, or individuals covered by this system, or (3) the Special Counsel determines that there exists a legitimate public interest (e.g., to demonstrate that the law is being enforced, or to deter the commission of prohibited personnel practices, prohibited political activity, and other prohibited activity within the OSC's jurisdiction), except to the extent that the Special Counsel determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

r. Disclose information to the U.S. Department of Labor (DOL) about OSC's referral of a complaint alleging a violation of veterans preference requirements to DOL for further action under the Veterans' Employment Opportunities Act of 1998; disclose information to DOL or any agency or person as needed to develop relevant information about matters referred by DOL to OSC under 38 U.S.C. 4324 (USERRA); disclose information to DOL or any agency or person as needed to advise on the status or disposition of matters referred by DOL to OSC for disciplinary action under 5 U.S.C. 1215, or possible litigation under 38 U.S.C. 4324; or disclose information to DOL or any agency or person as needed to develop relevant information about, or to advise on the status or disposition of, matters investigated under a USERRA demonstration project at OSC (Sec. 204, Pub. L. 108–454; Sec. 105 Pub. L. 111–275); or disclose information to the U.S. Department of Defense, Employer Support of the Guard and Reserve (ESGR), for the purpose of having ESGR mediate USERRA complaints received by or referred to OSC;

s. To disclose records, when OSC has agreed to represent a USERRA complainant under 38 U.S.C. 4324(a)(2)(A), from the corresponding USERRA investigative file to the relevant USERRA litigation file, and from the relevant USERRA litigation file to the USERRA complainant;

t. Disclose information to agency contractors, experts, consultants, detailees, or non-OSC employees performing or working on a contract, service, or other activity related to the system of records, when necessary to accomplish an agency function related to the system;

u. Make lists and reports available to the public pursuant to 5 U.S.C. 1219;

v. Disclose information to appropriate agencies, entities, and persons when: (1) OSC suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) OSC has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OSC or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

w. Disclose information to appropriate federal entities with subject matter expertise to the extent necessary to obtain advice on any authorities, programs, or functions associated with records in this system;

x. Disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where OSC becomes aware of a violation or potential violation of civil or criminal law or regulation; and to OPM and the OMB pursuant to 5 U.S.C. 1214;

y. Disclose information to the Integrity Committee established under section 11(d) of the Inspector General Act of 1978, when needed because of receipt, review or referral to the Integrity Committee under section 7(b) of Public Law 110–409; or as needed for a matter referred to OSC by the Integrity Committee;

z. Disclose information to the DOJ and/or the Federal Bureau of Investigation for inclusion in the National Instant Criminal Background Check System (NICS), pursuant to the reporting requirements of the Brady Handgun Violence Prevention Act, as amended by the NICS Improvement Amendments Act of 2007; and

aa. Disclose information when consulting with, or referring a record to, another Federal entity for the purpose of making a decision on a request for information under the FOIA or the Privacy Act; or to the Office of Government Information Services established at NARA by the Open Government Act of 2007, which amended the FOIA, for the purpose of conducting mediation and otherwise resolving disputes under FOIA.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a variety of media, primarily consisting of file folders, and computer storage equipment.

RETRIEVABILITY:

Files in this system of records are retrievable by the names of key individuals or agencies involved (e.g., complainants or requesters; persons on whose behalf OSC seeks corrective action; subjects identified in disciplinary proceedings, warning letters, or other determinations; legal, congressional, or other representatives or points of contact; or key witnesses), although files are generally retrieved by the name of: (a) The complainant

alleging a prohibited personnel practice, or other prohibited activity; (b) the alleged subject of a complaint about prohibited political activity; (c) the person filing an allegation through the OSC whistleblower disclosure channel; (d) the name of the person filing a request for an advisory opinion on political activity, or the third party subject of such advisory opinions; (e) the name of the person on whose behalf OSC seeks corrective action, or the person against whom OSC seeks disciplinary action, in litigation before the MSPB; (f) the plaintiff in litigation or administrative claims against OSC; persons requesting discovery from OSC; and FOIA and Privacy Act requesters and appellants.

SAFEGUARDS:

These records are located in lockable file cabinets or in secured areas. The required use of computer password protection identification features and other system protection methods also restrict access. Access is limited to those agency personnel who have an official need for access to perform their duties.

RETENTION AND DISPOSAL:

Case file records related to allegations of prohibited personnel practices and other prohibited activities, including allegations of improper political activity, violations of USERRA, and other matters under OSC's jurisdiction, including program litigation records and records of the ADR Unit and the Disclosure Unit, that are of extraordinary importance to the nation or OSC, are permanent records when approved by the Special Counsel. Case file records of the Disclosure Unit that result in either a referral to an agency head pursuant to 5 U.S.C. 1213, or an informal referral to an agency's Inspector General, are retained for 10 years after the date of closure. Other case file records related to such prohibited activities, including program litigation, and the Disclosure Unit are retained for 6 years after the date of closure. Case file records of Formal Advisory Opinions of the Hatch Act Unit are retained for 6 years after the date of closure. Litigation case file records relating to the legal defense of OSC and its interests in matters and claims filed against the agency in courts, administrative tribunals, or other forums, including formal and informal discovery requests, and other claims or similar proceedings that are of extraordinary importance to the nation or OSC are permanent records when approved by the Special Counsel. All other such defensive litigation and claim case file records are retained for 7 years after the date of closure. Additionally, final signed settlement agreements are retained for 20 years after the date of closure. Personally identifiable information in OSC's electronic case tracking system is retained until deleted from the database 25 years after the corresponding case file is destroyed. Case file records related to OSC's FOIA and Privacy Act Program are retained in accordance with NARA's General Records Schedule 14 for Information Services Records. Disposal of records is accomplished by shredding or by NARA-approved processes. Electronic information is disposed of by deletion. OSC is revising its record retention schedule in consultation with NARA. Pending NARA approval of the revised records schedule, records are maintained for the current or proposed retention, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

The official responsible for records management functions associated with OSC program and administrative files, including those in the OSC/GOVT–1 system of records, is the Records Management Officer, Document Control Branch, U.S. Office of Special Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036–4505.

NOTIFICATION PROCEDURE:

Individuals who wish to inquire whether this system contains information about them should contact the Privacy Act Officer, U.S. Office of Special Counsel: (1) By mail at 1730 M Street NW., Suite 218, Washington, DC 20036–4505; (2) by telephone at 202–254–3600; or (3) by fax: at 202–653–5161. To assist in the process of locating and identifying records, individuals should furnish the following: Name and home address; business title and address; any other known identifying information such as an agency file number or identification number; a description of the circumstances under which the records were compiled; and any other information deemed necessary by OSC to properly process the request.

RECORD ACCESS PROCEDURES:

Same as notification procedure, above. Requesters should also reasonably specify the record contents being sought. Rules about access are in 5 CFR part 1830.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest records about them should contact OSC's Privacy Act Officer, identify any information they believe should be corrected, and furnish a statement of the basis for the requested correction along with all available supporting documents and materials. See OSC Privacy Act regulations at 5 CFR part 1830.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a variety of sources, consisting of complainants or others on whose behalf allegations, disclosures of information, or requests for information, have been submitted or referred to OSC; legal, congressional, or other representatives or points of contact; other government bodies; witnesses and subjects in matters under review; principals involved in litigation matters, including parties and their representatives; and other persons or entities furnishing information pertinent to the discharge of functions for which OSC is responsible.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

OSC will claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the Act that fall within the category of investigatory material described in paragraphs (2) and (5), and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations of prohibited personnel practices, unlawful political activity, whistleblower disclosures, USERRA violations, and other matters under OSC's jurisdiction, and to protect identities of confidential sources of information, including in background investigations of OSC employees, contractors, and other individuals conducted by or for OSC. The exemption for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. OSC may also refuse access to any information compiled in reasonable anticipation of a civil action or proceeding.

Dated: April 13, 2012.

Mark Cohen,

Deputy Special Counsel.

[FR Doc. 2012–9605 Filed 4–20–12; 8:45 am]

BILLING CODE 7405–01–P

DEPARTMENT OF STATE

[Public Notice 7852]

60-Day Notice of Proposed Information Collection: DS–5506, Local U.S. Citizen Skills/Resources Survey

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Local U.S. Citizen Skills/Resources Survey.
- *OMB Control Number:* OMB No. 1405–0188.
- *Type of Request:* Revision.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5506.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 2,400.
- *Estimated Number of Responses:* 2,400.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 600 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATE(S): The Department will accept comments from the public up to 60 days from April 23, 2012.

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

- *Email: ASKPRI@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, CA/OCS/PRI, SA–29, 4th Floor, Washington, DC 20520.
- *Fax:* 202–736–9111.
- *Delivery or Courier:* U.S. Department of State, CA/OCS/PRI, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520 or at *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Local U.S. Citizen Skills/Resources Survey is a systematic method of gathering information about skills and resources from U.S. citizens that will assist in improving the well-being of other U.S. citizens affected or potentially affected by a crisis.

Methodology

This information collection can be completed by the respondent electronically or manually. The information collection will be collected on-site, by mail, fax and email.

Dated: April 11, 2012.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–9750 Filed 4–20–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. FMCSA–2012–0132]

Privacy Act of 1974; System of Records Notice

AGENCY: Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice to establish a new system of records.

SUMMARY: The Department of Transportation's (DOT) Federal Motor Carrier Administration (FMCSA) intends to establish a new Federal Motor Carrier system of records titled ''DOT/FMCSA 009—National Registry of Certified Medical Examiners'' (National Registry), under the Privacy Act of 1974 (5 U.S.C. 552a).

The DOT system, known as the National Registry of Certified Medical Examiners (National Registry), is used to produce trained, certified medical examiners who fully understand the medical standards in the Federal Motor Carrier Safety Regulations (FMCSRs). Medical Examiners (MEs) will be expected to understand how the FMCSR standards relate to the mental and physical demands of operating a commercial motor vehicle (CMV). MEs will be required to successfully complete training and pass a certification test before being listed on the National Registry. Once the National Registry program is established, FMCSA will require all interstate CMV drivers to obtain their medical certificates from a medical examiner listed on the National Registry. The general public can search and access information about the National Registry program, including the program description, contact information, and National Registry Number for all FMCSA Certified MEs, Test Delivery Organizations and their affiliated Test Centers through the publicly available Web site.

MEs who choose to pursue FMCSA certification to conduct CMV medical exams will register with FMCSA through the National Registry Web site. FMCSA will track the MEs' status of completion of the required FMCSA medical examiners' certification process. The MEs will be required to successfully complete FMCSA-approved training prior to taking the FMCSA ME certification test at an FMCSA-approved testing organization, at an affiliated test center's facility, or by means of online testing.

Test Developers for FMCSA will create and revise the certification test questions and answers that will be administered by Test Centers. Test Developers will analyze medical examiner's test certification responses to identify future improvements and modifications to test questions. They will also analyze the test questions and answers to identify potential patterns of fraud and abuse in the testing process and medical community.

The Test Centers will verify and document the ME's identity, medical licensing, and training completion prior to administering the FMCSA ME certification test. Test Centers will administer the FMCSA Certification test according to FMCSA specifications and are responsible for submitting the medical examiner certification test results to the National Registry. Testing organizations that offer testing of MEs by means of online testing will provide a means to authenticate the identity of the person taking the test, to monitor the

activity of the person taking the test, and to prevent the person taking the test from reproducing the contents of the test. FMCSA will validate the test results, medical examiner licensing credentials and training, and notify the ME of certification.

The Certified Medical Examiner or their administrative personnel are required to submit data every month to the National Registry for each CMV driver medical examination they have conducted during the previous month. FMCSA will use the CMV driver medical exam information to monitor the ME competence and performance in evaluating the CMV driver health and fitness and to detect irregularities in examination procedures. Certified Medical Examiners and their administrative personnel have the option to register with FMCSA in order to view previously submitted CMV driver medical exam summary data, upload driver medical examination summary data to FMCSA and edit their medical examiner's contact information.

The National Registry is more thoroughly detailed below and in the associated Privacy Impact Assessment (PIA). The PIA can be found on the DOT Privacy Web site at *http://dot.gov/privacy.* This newly established system will be included in the Department of Transportation's inventory of record systems.

DATES: Effective date is May 17, 2012. Written comments should be submitted on or before the effective date. DOT/FMCSA may publish an amended SORN in light of any comments received.

ADDRESSES: You may submit comments, identified by Docket No. FMCSA–2012–0132, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590.

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

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.* Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Elaine Papp, (202) 366–0421, Division Chief, Division of Medical Programs, Office of Carrier, Driver and Vehicle Safety, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. For privacy issues, please contact: Claire W. Barrett (202–366–8135), Departmental Chief Privacy Officer, Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. The National Registry Program

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Motor Carrier Administration (FMCSA) proposes to establish a new DOT system of records titled ''DOT/FMCSA 009—National Registry of Certified Medical Examiners'' (National Registry) to satisfy the requirements of 49 U.S.C. 31149.

The National Registry program is designed to produce trained, certified medical examiners who fully understand the medical standards in the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA is developing the National Registry program to improve highway safety and driver health by requiring that medical examiners be trained and certified to determine effectively whether a commercial motor vehicle driver's health meets the FMCSR standards. Medical examiners will be expected to understand how the standards relate to the mental and physical demands of operating a commercial motor vehicle (CMV). Once the National Registry program is established, FMCSA will require all interstate CMV drivers to obtain their medical certificates from a medical examiner listed on the National Registry. FMCSA will require MEs who choose to become certified to register on the National Registry Web site. They will need to provide contact information, ME credentials, employer information and ME training information. MEs will be able to update and edit their contact information and training information. To be listed as a certified ME on the National Registry, an ME must complete approved training and pass a certification test administered at a Test Center or by means of online testing by an FMCSA-approved Testing Delivery Organization. Once certified, an ME will be listed on FMCSA's public Web site and their contact information and National Registry Number will be made available to assist CMV drivers in contacting locating FMCSA certified MEs.

FMCSA requires MEs to take a certification test at selected Testing Delivery Organization, affiliated Test Center facility, or by means of on-line testing. A Testing Delivery Organization may apply to FMCSA for approval by providing documentation of compliance with FMCSA policies and procedures. Once FMCSA has approved a Testing Delivery Organization as eligible to deliver certification tests, the organization and affiliated Test Centers will be listed on the National Registry and made available to the public through the FMCSA Web site. The Testing Delivery Organization and affiliated Test Centers are not covered by this system of records notice.

The Testing Delivery Organization/Test Center is responsible for administering the FMCSA ME certification test according to FMCSA specifications, scoring and storing test results, and transferring each ME's certification test results to the National Registry. The test results will include the ME's National Registry number, test form used, all test answers, score, and grade for the ME. FMCSA will use automated and manual processes to determine if the ME's state medical license is valid before confirming the ME's certification eligibility. Once FMCSA makes a final eligibility determination, FMCSA will notify the ME of the certification decision. Test Developers will analyze the certification exam test results to identify future improvements and modifications to the test questions. They will also analyze the test questions and answers to identify potential patterns of fraud and abuse in the testing process.

Once certified, the ME may perform CMV driver exams on CMV drivers who are required to receive a physical exam once every two years. Every month, the FMCSA Certified Medical Examiner or his or her designated administrative personnel are required to transmit to the National Registry at least monthly the results of CMV driver medical examinations that they have performed. FMCSA will use the CMV driver medical exam information to monitor ME competence and performance in evaluating the CMV driver health and fitness and to detect irregularities in examination procedures. Certified Medical Examiners and their administrative personnel have the option to register with FMCSA in order to allow them to view previously submitted CMV driver medical exam summary data, upload driver medical examination summary data to FMCSA and edit their medical examiner's contact information.

II. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System

of Records'' is a group of any records under the control of a federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information).

FMCSA has published a Privacy Impact Assessment (PIA) for the National Registry program and publication of this SORN. In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NUMBER:
DOT/FMCSA 009

SYSTEM NAME:

National Registry of Certified Medical Examiners (National Registry).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Records are maintained at the Volpe National Transportation Systems Center (Volpe Center), U.S. Department of Transportation, Cambridge, MA 02142. Records may also be maintained at authorized Test Delivery Organizations, addresses for which may be found on the FMCSA National Registry Web site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this include:

- Medical Examiners (MEs) applying for FMCSA ME Certification.
- Certified MEs' administrative personnel who have registered on the National Registry.
- Commercial Motor Vehicle (CMV) Drivers examined by FMCSA Certified MEs.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

The National Registry of Certified Medical Examiners system collects, processes, transmits, and stores the following types of information:

(1) Information on Medical Examiners:

- Identity Verification
- Full name (first, last, middle initial)*
- Type of ME photographic identification document
- Expiration date of ME photographic identification document
- National Registry Number created by FMCSA*
- Contact Information/Place of Business (physical location where ME will perform licensed CMV driver medical exams)
- Business name*
- Business address
- Business telephone number
- Business email address
- Business Web site link information
- Medical Credential
- State Medical License Number*
- Medical License State of Issue
- State medical license expiration date
- Medical profession*
- Employer Contact (Health care provider that employs the ME)
- Name
- Address
- Telephone number
- Email address
- Training Information
- Training received/completed
- Provider name
- Training provider address
- Training completion date
- Certification Test Information
- Test Delivery Organization/Test Center name
- Date of certification test
- Certification test questions
- Certification test answers
- Test score (numeric)
- Test results (pass/fail)
- Certification Decision/Status

Data elements marked with an asterisk ''*'' are collectively referred to as ''National Registry Identity'' information.

(2) MEs' Administrative Personnel:

- Identity Verification Information
- Full name (first, last, middle initial)
- ME Business Relationship
- Business address
- Business telephone number
- Business email address
- Business Web site link information
- Name of ME for whom the individual is acting as administrative personnel
- Certified ME National Registry number of ME for whom the individual is acting as administrative personnel

(3) Commercial Motor Vehicle Drivers' Information:

- Identity Verification
  - Full name
  - Date of birth
- State Driver's License
- License number
- License issuing State
- Commercial Driver License (CDL) status
- CDL Interstate status
- Medical Examination
- Certificate expiration date
- Name of ME conducting Medical Exam
- Medical qualification decision
- Driver restrictions/variances
- Driver waiver/exemption type
- Supporting medical documentation for medical qualification decision making (collected only in event of FMCSA oversight/audit activity)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SAFETEA–LU sections 4116(a) (codified as amended at 49 U.S.C. 31149) and 4116(b) (codified as amended at 49 U.S.C. 31136(a)(3)).

PURPOSE(S):

FMCSA will use the ME contact information, medical credentials, training, certification test and identification information to evaluate the ME's eligibility for certification. FMCSA may request and review ME supporting documentation for eligibility of certification. FMCSA will compare the ME's identity verification, contact and medical licensing information to the State's medical licensing data provided by the ME during registration in order to ensure the data provided by the ME is valid. FMCSA reviews the ME test responses in order to validate the test grade and score provided by the Test Center and to ensure that the Test Center properly graded and scored the test. FMCSA will use the ME contact and ME employer information to list eligible FMCSA certified MEs on the publically available Web site for the general public to search for MEs.

FMCSA will use the FMCSA ME contact information including that of their business and/or employer and/or their designated ME administrative personnel (if identified), to communicate with the ME regarding the ME's application and certification status.

FMCSA will use the CMV driver medical exam information to monitor the ME competence and performance in evaluating the CMV driver's health and to detect irregularities in examination procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information

contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- To the Test Centers verify the ME's identity and eligibility to take the ME Certification test, to make changes to ME information (at the direction of the ME) in the National Registry at the time Certification test, and to transfer Certification test information to the National Registry.
- To Test Development Contractors who will use the ME Certification test results, ME profession, and geographic location to analyze the certification test results to identify future improvements and modifications to the test questions and to identify potential patterns of fraud and abuse in the testing process by individual medical examiner candidates, testing organizations, testing centers, or proctors.
- To FMCSA Certified MEs or their Administrative Personnel to search for CMV drivers for whom they have performed medical examinations and submit/update CMV driver medical exam summary data to FMCSA.
- To the general public to perform searches of the publically available portion of the National registry for the purpose of identifying FMCSA Certified MEs and the location of medical examination facilities.
- To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.
- To contractors, consultants, and others performing or working on a contract, cooperative agreement, grant, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FMCSA employees.
- To State Medical Boards for the purposes of verifying ME license information and status. (State Medical Boards are the authoritative repositories for ME license information and, as such, already have access to ME licensing information and the verification of the same by the Department does not constitute a disclosure under the Privacy Act. This Routine Use is included in this Notice in an effort by the Department to be transparent to the public regarding the way it which it will use personal information maintained in the National Registry system of records.)
- In addition to those disclosures permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, additional disclosures may be made in accordance with the U.S. Department of Transportation (DOT) Prefatory Statement of General Routine Uses published in the **Federal Register** on December 29, 2010 (75 FR 82132).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically in the National Registry system. The records are also stored on backup tapes and sent off-site weekly to a secure storage facility.

RETRIEVABILITY:

FMCSA may retrieve ME information based on ME name, business name, employer address, medical profession, and/or National Registry number. FMCSA may retrieve information on CMV drivers based on: driver's last name, and exam start and end date range. MEs may access information on CMV drivers for whom they have submitted exam results using the following criteria: driver's last name, or exam start and end date range. Testing Delivery Organizations/Test Centers may access ME information for the purposes of verifying ME identity and certification eligibility using the ME Name, address and/or National Registry number to verify the ME's eligibility and identification.

ACCESSIBILITY (INCLUDING SAFEGUARDS):

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Federal and DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances and permissions.

RETENTION AND DISPOSAL:

The DOT/FMCSA records schedule for the National Registry program records is currently pending approval at the National Archives and Records Administration (NARA) under Job Number N1–557–11–2. All records maintained in this system of records will be treated as permanent records until the schedule is approved by NARA. The proposed schedule includes the following retention periods for records containing PII: National Registry Identity Information for all MEs granted National Registry status shall be retained for 60 years from the date that certification was granted. Records other than National Registry Identity information of MEs who are certified will be retained for 16 years (the duration of the certificate's effectiveness, which is ten (10) years, plus an additional six (6) years to allow employers and investigators to verify the validity of CMV drivers' medical certification and to allow FMCSA to process ME removals and Administrative Reviews of removals).

National Registry applications of MEs who do not complete the certification process will be maintained for one year from initial application submission.

National Registry applications of MEs who fail the qualification test or are deemed ineligible for certification by DOT will be maintained for one year from the date of the certification decision.

Records of MEs who voluntarily request removal from the National Registry will be maintained for three years from the date the removal is finalized by DOT.

National Registry Identity Information for all MEs involuntarily removed from the National Registry shall be retained for 60 years from the date that certification was granted. All other records related to these MEs shall be retained for 16 years (the duration of the certificate's effectiveness, which is ten (10) years, plus an additional six (6) years to allow employers and investigators to verify the validity of CMV drivers' medical certification and to allow FMCSA to process ME removals and Administrative Reviews of removals).

Records of individual CMV Drivers will be maintained concurrently with the records of the ME who performed the driver's medical examination.

Records of the ME's administrative personnel will be maintained concurrently with the records of the ME for whom they provide services or for one year from the date that the Department is notified that the individual is no longer authorized to perform duties in the system on behalf the ME, whichever is shorter.

SYSTEM MANAGER AND ADDRESS:

Elaine Papp, Division Chief, Division of Medical Programs, Office of Carrier, Driver and Vehicle Safety, Federal Motor Carrier Safety Administration,

U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system may make a request in writing to the System Manager. The request must include the requester's name, mailing address, telephone number, and/or email address; a description and the location of the records requested; and verification of identity (such as a statement, under penalty of perjury), that the requester is the individual who he or she claims to be. Requests must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must verify your identity by providing either a notarized statement or a statement signed under penalty of perjury stating that you are the person that you say you are. You may fulfill this requirement by: (1) Having your signature on your request letter witnessed by a notary; or (2) including the following statement immediately above the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].'' If you request information about yourself and do not follow one of these procedures, your request cannot be processed. Requests not following these procedures will not processed.

RECORD ACCESS PROCEDURES:

Same as indicated under ''Notification Procedure''.

PROCEDURE TO CONTEST RECORDS:

Same as indicated under ''Notification Procedure''.

RECORD SOURCE CATEGORIES:

ME information is obtained from application submissions provided by the medical examiner. CMV driver information is provided by the driver at the time of medical examination to the ME for submission to FMCSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 17, 2012.

Claire W. Barrett,

Departmental Chief Privacy Officer, Department of Transportation.

[FR Doc. 2012–9624 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consensus Standards, Light-Sport Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of three new and three revised consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule issued July 16, 2004, and effective September 1, 2004. ASTM International Committee F37 on Light Sport Aircraft developed the new and revised standards with Federal Aviation Administration (FAA) participation. By this notice, the FAA finds the new and revised standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule.

DATES: Comments must be received on or before June 22, 2012.

ADDRESSES: Comments may be mailed to: Federal Aviation Administration, Small Airplane Directorate, Programs and Procedures Branch, ACE–114, Attention: Terry Chasteen, Room 301, 901 Locust, Kansas City, Missouri 64106. Comments may also be emailed to: *9-ACE-AVR-LSA-Comments@faa.gov*. All comments must be marked: Consensus Standards Comments, and must specify the standard being addressed by ASTM designation and title.

FOR FURTHER INFORMATION CONTACT: Terry Chasteen, Light-Sport Aircraft Program Manager, Programs and Procedures Branch (ACE–114), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4147; email: *terry.chasteen@faa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the availability of three new and three revised consensus standards relating to the provisions of the Sport Pilot and Light-Sport Aircraft rule. ASTM International Committee F37 on Light Sport Aircraft developed the new and revised standards. The FAA expects a suitable consensus standard to be reviewed at least every two years. The two-year review cycle will result in a standard revision or reapproval. A standard is issued under a fixed designation (i.e., F2244); the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A reapproval indicates a two-year review cycle completed with no technical changes. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval. A notice of availability (NOA) will only be issued for new or revised standards. Reapproved standards issued with no technical changes or standards issued with editorial changes only (i.e., superscript epsilon (ε)) are considered accepted by the FAA without need for a NOA.

Comments Invited: Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the consensus standard number and be submitted to the address specified above. All communications received on or before the closing date for comments will be forwarded to ASTM International Committee F37 for consideration. The standard may be changed in light of the comments received. The FAA will address all comments received during the recurring review of the consensus standard and will participate in the consensus standard revision process.

Background: Under the provisions of the Sport Pilot and Light-Sport Aircraft rule, and revised Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'', dated February 10, 1998, industry and the FAA have been working with ASTM International to develop consensus standards for light-sport aircraft. These consensus standards satisfy the FAA's goal for airworthiness certification and a verifiable minimum safety level for light-sport aircraft. Instead of developing airworthiness standards through the rulemaking process, the FAA participates as a member of Committee F37 in developing these standards. The use of the consensus standard process assures government and industry discussion and agreement on appropriate standards for the required level of safety.

Comments on Previous Notices of Availability

In the Notice of Availability (NOA) issued on July 20, 2011, and published in the **Federal Register** on July 29, 2011 the FAA asked for public comments on the new and revised consensus standards accepted by that NOA. The comment period closed on September

27, 2011. No public comments were received regarding the standards accepted by this NOA.

Consensus Standards in This Notice of Availability

The FAA has reviewed the standards presented in this NOA for compliance with the regulatory requirements of the rule. Any light-sport aircraft issued a special light-sport airworthiness certificate, which has been designed, manufactured, operated and maintained, in accordance with this and previously accepted ASTM consensus standards provides the public with the appropriate level of safety established under the regulations. Manufacturers who choose to produce these aircraft and certificate these aircraft under 14 CFR part 21, §§ 21.190 or 21.191 are subject to the applicable consensus standard requirements. The FAA maintains a listing of all accepted standards on the FAA Web site.

The Revised Consensus Standard and Effective Period of Use

The following previously accepted consensus standards have been revised, and this NOA is accepting the later revision. Either the previous revision or the later revision may be used for the initial certification of special light-sport aircraft until October 22, 2012. This overlapping period of time will allow aircraft that have started the initial certification process using the previous revision level to complete that process. After October 22, 2012, manufacturers must use the later revision and must identify the later revision in the Statement of Compliance for initial certification of special light-sport aircraft unless the FAA publishes a specific notification otherwise. The following Consensus Standards may not be used after October 22, 2012:

ASTM Designation F2245–10c, titled: Standard Specification for Design and Performance of a Light Sport Airplane.

ASTM Designation F2352–09, titled: Standard Specification for Design and Performance of Light Sport Gyroplane Aircraft.

ASTM Designation F2564–09, titled: Standard Specification for Design and Performance of a Light Sport Glider

The Consensus Standards

The FAA finds the following new and revised consensus standards acceptable for certification of the specified aircraft under the provisions of the Sport Pilot and Light-Sport Aircraft rule. The following consensus standards become effective April 23, 2012 and may be used unless the FAA publishes a specific notification otherwise:

ASTM Designation F2245–11, titled: Standard Specification for Design and Performance of a Light Sport Airplane.

ASTM Designation F2352–11, titled: Standard Specification for Design and Performance of Light Sport Gyroplane Aircraft.

ASTM Designation F2564–11, titled: Standard Specification for Design and Performance of a Light Sport Glider

ASTM Designation F2745–11, titled: Standard Specification for Required Product Information to be Provided with an Airplane.

ASTM Designation F2839–11, titled: Standard Practice for Compliance Audits to ASTM Standards on Light Sport Aircraft.

ASTM Designation F2840–11, titled: Standard Practice for Design and Manufacture of Electric Propulsion Units for Light Sport Aircraft.

Availability

These consensus standards are copyrighted by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959. Individual reprints of a standard (single or multiple copies, or special compilations and other related technical information) may be obtained by contacting ASTM at this address, or at (610) 832–9585 (phone), (610) 832–9555 (fax), through *service@astm.org* (email), or through the ASTM Web site at *www.astm.org.* To inquire about standard content and/or membership or about ASTM International Offices abroad, contact Christine DeJong, Staff Manager for Committee F37 on Light Sport Aircraft: (610) 832–9736, *cdejong@astm.org.*

Issued in Kansas City, Missouri, on February 22, 2012.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9743 Filed 4–20–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Grant Assurance Obligations for Sacramento International Airport (SMF), Sacramento, CA

AGENCY: Federal Aviation Administration, US DOT.

ACTION: Notice of Request to Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of two parcels of land comprising approximately 6.50 acres of airport property at the Sacramento International Airport, California. The County of Sacramento proposes to release the 6.50 acres for sale to the California's Reclamation District 1000 at fair market value. The two parcels of land are occupied in their entirety by a storm water drainage canal and pumping plant owned and operated by Reclamation District 1000 and do not serve any aviation purposes. The property serves as a regional drainage canal and pumping plant to support facilities for transporting storm water away from developed and undeveloped property, including part of the Sacramento International Airport in the southwest section of the Natomas Basin.

DATES: Comments must be received on or before May 23, 2012.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Robert Y. Lee, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, **Federal Register** Comment,1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Greg Rowe, Senior Environmental Analyst, County of Sacramento, 6900 Airport Boulevard, Sacramento, California 95837.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The County of Sacramento, California requested a release from grant assurance obligations for approximately 6.50 acres of land that is not contiguous to the airport and located southwest of the airport between the Sacramento River and Interstate Highway 5. The property was originally acquired as two separate parcels, one measuring 6.27 acres and the other 0.18 acres. The Federal Aviation Administration's Federal Aid to Airports Program, FAAP 9–04–130–6401, provided partial grant funding to acquire the property.

Due to the parcels' location and use, the property has no alternative airport use. The property was improved for flood control purpose and continues to serve that purpose. The larger parcel

contains a drainage canal and the smaller parcel has a pumping plant that pumps storm water and agricultural runoff into the Sacramento River. The property also serves as a cross canal between the West Drainage Canal and the Sacramento River. The area is zoned as ''Permanent Agricultural Zone,'' in conformity with most of the surrounding area, which is farm land. Since the 1960's, the land has been used as a regional drainage canal and pumping plant. The location, size and dimensions of the two parcels are only suited as a drainage canal and open space. With no contemplated commercial use, the land's value is diminimus.

The release will allow the title of the two parcels to be transferred to the Reclamation District 1000 in exchange for storm water drainage channel clearance services. The value of these services will compensate the airport for the property's residual fair market value. The channel clearance service is likely more beneficial to the County Airport System than a diminimus payment. The release parcels will continue to be utilized for drainage purposes and will benefit the airport by increasing the airport's impervious surface runoff and drainage needs. Furthermore, it represents a compatible land use that will not interfere with the airport or its operation. Therefore, the release is a benefit to civil aviation.

Issued in Brisbane, California, on April 16, 2012.

Arlene Draper,

Acting Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2012–9741 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Marshfield Municipal Airport, Marshfield, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 24.89 acres of the airport property at the Marshfield Municipal Airport, Marshfield WI. The WisDOT issued a Categorical Exclusion for the release on March 25, 2011.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan.

The acreage comprising of parcels 38 and 39 were originally acquired under Grant Nos. ADAP 7–55–0039–01. The City of Marshfield (Wisconsin), as airport owner, has concluded that the subject airport land is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. The airport will receive the appraised fair market value of $68,000 for the land in addition to Parcels 40 and 41 as identified on the Exhibit A Property Map. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before May 23, 2012.

ADDRESSES: Mr. Andrew J. Peek, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Suite 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4640/Fax Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew J. Peek, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Suite 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4640/Fax Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at Marshfield Municipal Airport in Marshfield, Wisconsin and described as follows:

Parcel 38: Outlot 1 of Wood County Certified Survey Map Number 9215, as recorded in Volume 32 of the Certified Survey Maps of Wood County on Page 115 as Document Number 2010R11200, being a part of the Southwest quarter of the Southeast quarter of Section 18, Township 25 North, Range 3 East, in the City of Marshfield, Wood County, Wisconsin; and

Parcel 39: Lot 1 of Wood County Certified Survey Map Number 9215, as recorded in Volume 32 of the Certified Survey Maps of Wood County on Page 115 as Document Number 2010R11200, being part of the Northeast quarter of the fractional Southwest quarter of the fractional Southwest quarter of Section 18, Township 25 North, Range 3 East, in the City of Marshfield, Wood County, Wisconsin.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN, on March 21, 2012.

Steven J. Obenauer,

Manager, Minneapolis Airports District Office FAA, Great Lakes Region.

[FR Doc. 2012–9678 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Former Willmar Municipal Airport, Willmar, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 90 acres of airport property at the former Willmar Municipal Airport, Willmar, MN. The land will be used for an industrial park. The FAA issued a Categorical Exclusion on February 12, 2012.

The City of Willmar built a new airport in 2006, therefore the acreage being released is not needed for aeronautical use. The 90 acres are on the East side of the former Willmar Municipal Airport, more specifically East of County Road 5 and north of Willmar Avenue SW. The acreage was originally acquired with City of Willmar funds. There are no impacts to the airport by allowing the airport to dispose of the property. The fair market value of this land is $1,700,000 and will be applied to the new Willmar Municipal Airport for operating and maintaining the airport and/or

improvements. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before May 23, 2012.

ADDRESSES: Ms. Nancy M. Nistler, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4638/ FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Willmar City Offices, 333 6th Street SW., Willmar, MN 56201.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy M. Nistler, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4638/FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Willmar City Offices, 333 6th Street SW., Willmar, MN 56201.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at the former Willmar Municipal Airport in Willmar, Minnesota and described as that part of the West Half and also that part of Government Lot 3 and also that part of the southwest Quarter of the southeast Quarter, all located in Section 16, Township 119 North, Range 35 West of the Fifth Principal Meridian, Willmar Township, Kandiyohi County, Minnesota, described as follows:

Beginning at the southeast corner of the southwest quarter of said Section 16;

Thence on a geodetic bearing of north 89 degrees 36 minutes 20 seconds west, along the south line of said Section 16, a distance of 2547.51 feet;

Thence on a bearing of north 00 degrees 57 minutes 01 seconds west a distance of 816.83 feet;

Thence on a bearing of north 44 degrees 37 minutes 57 seconds east a distance of 139.98 feet;

Thence on a bearing of north 00 degrees 57 minutes 01 seconds west a distance of 100.02 feet;

Thence on a bearing of north 45 degrees 22 minutes 03 seconds west a distance of 142.85 feet;

Thence on a bearing of north 00 degrees 57 minutes 01 seconds west a distance of 750.79 feet;

Thence northerly, a distance of 103.01 feet, along a curve, which is concave to the east, having a radius of 11359.16 feet, a central angle of 0 degrees 31 minutes 10 seconds, and a chord bearing of north 00 degrees 41 minutes 26 seconds west;

Thence on a bearing of north 00 degrees 10 minutes 43 seconds west a distance of 100.01 feet;

Thence northerly, a distance of 118.08 feet, along a curve, which is concave to the east, having a radius of 11359.16 feet, a central angle of 0 degrees 35 minutes 44 seconds, and a chord bearing of north 00 degrees 22 minutes 17 seconds east;

Thence on a bearing of north 00 degrees 40 minutes 09 seconds east a distance of 1737.17 feet;

Thence on a bearing of south 74 degrees 37 minutes 43 seconds east a distance of 317.55 feet;

Thence easterly, a distance of 95.33 feet, along a curve, which is concave to the north, having a radius of 150.00 feet, a central angle of 36 degrees 24 minutes 52 seconds, and a chord bearing of north 87 degrees 09 minutes 52 seconds east;

Thence on a bearing of north 68 degrees 57 minutes 26 seconds east a distance of 941.53 feet;

Thence on a bearing of north 85 degrees 52 minutes 26 seconds east a distance of 75.02 feet;

Thence on a bearing of south 68 degrees 17 minutes 05 seconds east a distance of 81.23 feet;

Thence on a bearing of south 86 degrees 05 minutes 50 seconds east a distance of 47.38 feet;

Thence on a bearing of north 63 degrees 25 minutes 42 seconds east a distance of 15.73 feet to the southerly right of way boundary line of the state highway;

Thence on a bearing of south 69 degrees 56 minutes 49 minutes east, along the southerly right of way boundary line of the state highway, a distance of 37.90 feet to the westerly line of 28th Street SW., as shown on the record plat entitled Willmar Industrial Park Second Addition, on file in the office of the Kandiyohi County Recorder;

Thence on a bearing of south 20 degrees 05 minutes 26 seconds west, along the westerly line of said 28th Street SW., a distance of 662.91 feet;

Thence southeasterly, along the northwesterly line of said 28th Street SW., a distance of 160.23 feet, along a curve which is concave to the northwest, having a radius of 319.44 feet, a central angle of 28 degrees 44 minutes 18 seconds, and a chord bearing of south 34 degrees 27 minutes 34 seconds west;

Thence on a bearing of south 48 degrees 49 minutes 43 seconds west, along the northwesterly line of said 28th Street SW., a distance of 1197.80 feet;

Thence southwesterly, along the northwesterly line of said 28th Street SW., a distance of 336.70 feet, along a curve which is concave to the southeast, having a radius of 397.94 feet, a central angle of 48 degrees 28 minutes 44 seconds, and a chord bearing of south 24 degrees 35 minutes 18 seconds west;

Thence on a bearing of south 89 degrees 39 minutes 01 seconds east a distance of 5.09 feet;

Thence on a bearing of south 00 degrees 19 minutes 46 seconds west, a distance of 614.84 feet;

Thence on bearing of south 45 degrees 00 minutes 52 seconds east a distance of 533.66 feet to the north line of the south half of the southwest Quarter of said Section 16;

Thence on a bearing of south 89 degrees 38 minutes 06 seconds east, along the north line of the south Half of the southwest Quarter of said Section 16, a distance of 842.12 feet;

Thence on a bearing of south 00 degrees 21 minutes 54 seconds west a distance of 302.32 feet;

Thence on a bearing of south 45 degrees 18 minutes 52 seconds east a distance of 1293.75 feet;

Thence southeasterly, a distance of 193.28 feet, along a curve which is concave to the northeast, having a radius of 250.00 feet, a central angle of 44 degrees 17 minutes 51 seconds and a chord bearing of south 67 degrees 27 minutes 47 seconds east;

Thence on a bearing of south 89 degrees 36 minutes 42 seconds east a distance of 128.06 feet;

Thence on bearing of south 00 degrees 13 minutes 28 seconds east a distance of 46.45 feet to the south line of said Section 16;

Thence on a bearing of north 89 degrees 36 minutes 24 seconds west, along the south line of said Section 16, a distance of 53.20 feet to the point of beginning.

Issued in Minneapolis, MN, on April 3, 2012.

Steven J. Obenauer,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2012–9735 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Rickenbacker International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the Rickenbacker International Airport from aeronautical use to non-aeronautical use and to authorize the swap of the airport property. The proposal consists of the swap of improved land owned by the Columbus Regional Airport Authority (CRAA) for land owned by the United States Navy (Navy).

The CRAA has requested from FAA a ''Release from Federal agreement obligated land covenants'' to swap 18.320 acres of property acquired by the CRAA without Federal funding from the United States Air Force via Deed dated July 11, 2001, for 24.447 acres owned by the Navy.

The above mentioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the CRAA to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before May 23, 2012.

ADDRESSES: Documents reflecting this FAA action may be reviewed at the Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Welhouse, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734) 229–2952/Fax Number (734) 229–2950.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in the Township of Hamilton, Franklin County, Ohio, and described as follows:

Description of Property Being Released (18.320 Acres)

Situated in the State of Ohio, County of Franklin, Township of Hamilton, located in Sections 1 and 12, Township 3, Range 22, Congress Lands, being part of the property owned by United States of America, records of the Recorder's Office, Franklin County, Ohio said 18.320 acres being more fully bounded and described as follows:

Beginning for reference at RPA Mon. No. 13 found northeast of the centerline intersection of Tank Truck Road with 1st Street, thence South 65°00′21″ East a distance of 141.62 feet to an iron pin found;

Thence North 45°36′04″ East parallel and 60 feet southeast of said 1st Street, a westerly line of Rickenbacker Port Authority of record in Instrument No. 200001110008138, a distance of 1103.17 feet to the True Place of Beginning;

Thence North 45°36′04″ East parallel and 60 feet southeast of said 1st Street a distance of 1066.95 feet to an iron pin set at a point of curvature;

Thence with an arc of a curve to the right having a radius of 115.00 feet, delta angle of 89°59′55″, a chord bearing South 89°23′59″ East a distance of 162.63 feet to an iron pin set 30 feet southwest of Club Road;

Thence South 44°24′01″ East parallel and 30 feet southwest of said Club Road a distance of 566.60 feet to an iron pin set:

Thence South 45°34′28″ West parallel and 75 feet northwest of 2nd Street a distance of 1181.17 feet to an iron pin found on the north line of said Rickenbacker Port Authority;

Thence North 44°27′55″ West along the northerly line of said Rickenbacker Port Authority a distance of 473.04 feet to an iron pin found;

Thence North 45°40′41″ East a distance of 65.84 feet to an iron pin found;

Thence North 44°19′19″ West a distance of 72.72 feet to an iron pin found;

Thence South 45°40′41″ West a distance of 66.02 feet to an iron pin found;

Thence North 44°27′55″ West a distance of 136.38 feet to the True Place of Beginning containing 18.320 acres more or less, as calculated by the above courses. Subject however to all legal highways, easements and restrictions of record.

Issued in Romulus, Michigan on April 4, 2012.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2012–9677 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Colorado. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA 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 any of the listed highway projects will be barred unless the claim is filed on or before October 22, 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: Stephanie Gibson, Environmental Program Manager, Federal Highway Administration Colorado Division, 12300 W. Dakota Avenue, Lakewood, Colorado 80228, 720–963–3013, *Stephanie.gibson@dot.gov* normal business hours are 8 a.m. to 4:30 p.m. (Mountain time); You may also contact Vanessa Henderson, NEPA Program Manager, Colorado Department of Transportation, 4201 E. Arkansas Avenue, Shumate Building, Denver, Colorado 80222, 303–757–9878, *Vanessa.henderson@dot.state.co.us,* normal business hours are 6:30 a.m. to 4 p.m. (Mountain time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Colorado that are listed below. The actions by the Federal

agencies on a project, and the laws under which such actions were taken, are described in the environmental assessment (EA) or environmental impact statement (EIS) issued in connection with the project and in other key project documents. The EA or EIS, and other key documents for the listed projects are available by contacting the FHWA or the Colorado Department of Transportation at the addresses provided above. The EA, Finding of No Significant Impact (FONSI), Final EIS, and Record of Decision (ROD) documents can be viewed and downloaded from the Web sites listed below.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken. This notice does not, however, alter or extend the limitation period of 180 days for challenges to final agency actions subject to previous notices published in the **Federal Register**, including notice given by the Federal Transit Administration on September 23, 2010 related to U.S. 36 (75 FR 58017).

This notice applies to all Federal agency decisions, actions, approvals, licenses and permits on the project as of the issuance date of this notice, including but not limited to those arising under the following laws, as amended:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c–2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 [Section 404, Section 401, Section 319]; Land and Water Conservation Fund Act [16 U.S.C. 460l–4–460l–11]; Safe Drinking Water Act [42 U.S.C. 300f *et seq.*]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4129].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

The projects subject to this notice are:

1. *U.S. 36 Corridor Project.* Project location: U.S. 36 from Denver to Boulder. Project reference number: NO 0361–070. Project type: The project's purpose is to improve mobility along the U.S. 36 corridor from Interstate 25 in Adams County to Foothills Parkway/Table Mesa Drive in Boulder, a distance of approximately 18 miles. The project includes the reconstruction of U.S. 36 road surface, one buffer-separated managed lane in each direction, bus rapid transit (BRT) ramp stations, auxiliary lanes between most interchanges, a bikeway the entire length of the project, and alternative transportation strategies. FHWA NEPA documents: DEIS and Draft Section 4(f) Evaluation signed July 23, 2007, FEIS and Final Section 4(f) Evaluation signed October 30, 2009, ROD signed December 24, 2009. Department of the Army Permit No. 200380602. *http://www.coloradodot.info/projects/us36eis.*

2. *U.S. 6 and Wadsworth.* Project location: Lakewood, Jefferson County. Project reference number: STU 0062–019. Project type: Reconstruction of U.S. 6/Wadsworth Boulevard interchange with the existing clover leaf being changed to a tight diamond with loop ramp in the northwest quadrant and the widening of Wadsworth between 1 4th and 4th Avenues with the addition of a travel lane in each direction. FHWA NEPA documents: EA and Draft Section 4(f) Evaluation signed June 29, 2009, FONSI and Final Section 4(f) Evaluation signed March 12, 2010. *http://www.coloradodot.info/projects/US6wadsworth/environmental-assessment-and-draft-4-f-evaluation.html.*

3. *Powers Boulevard (SH 21) between Woodman Road and SH 16.* Project location: Colorado Springs, El Paso County. Project reference number: STU R200–109. Project type: The proposed project would reconstruct the existing expressway as a 6-lane freeway for 11 miles between Woodmen Road and Milton E. Proby Parkway, build 11 new grade separated interchanges, and obtain right-of-way to accommodate future interchanges for a freeway on the existing 5.8-miles between Milton E. Proby Parkway and SH 16. The purpose of the project is to reduce current and future traffic congestion on Powers Boulevard between Woodmen Road and SH 16 and to accommodate connections with the region's planned transportation network. FHWA NEPA documents: EA signed May 4, 2010, FONSI signed January 4, 2011. *http://www.thepowerslink.com/.*

4. *I–70 East Eagle Interchange.* Project location: Town of Eagle, Eagle County. Project reference number: CC 0702–268. Project type: The proposed project is a new interchange located 1.8 miles east of the existing Eby Creek Road interchange in Eagle with a connector road to U.S. 6. The purpose of the project is to address problems with congestion, local road connectivity, safety, and to support local development plans. FHWA NEPA documents: EA signed September 3, 2010, FONSI signed May 24, 2011. *http://www.townofeagle.org/index.aspx?NID=106.*

5. *I–70 Mountain Corridor Programmatic EIS.* Project location: Garfield, Eagle, Summit, Clear Creek, and Jefferson Counties. Project Reference Number: IM 0703–244. Project type: This Tier 1 EIS process identified a multimodal solution which includes three main components: non-infrastructure components, an Advanced Guideway System, and highway improvements. The Federal actions covered by this notice include Tier 1 decisions that will be used by Federal agencies in subsequent proceedings, including decisions whether to grant licenses, permits and approvals for highway projects. Tier 1

decisions may also be relied upon by state and local agencies in proceedings on the project. Section 4 of the Introduction of the Tier 1 Final Programmatic EIS and Section A of the Record of Decision specify the decisions being made at this Tier 1 level. Challenges to these Tier 1 decisions must be made within 180 days of this notice or they will be barred. The purpose for transportation improvements is to increase capacity, improve accessibility and mobility, and decrease congestion for travel demand (projected to occur in 2050) to destinations along the Corridor as well as for interstate travel, while providing for and accommodating environmental sensitivity, community values, transportation safety, and ability to implement the proposed solutions for the Corridor. FHWA NEPA documents: Draft Programmatic EIS signed August 10, 2010, Final Programmatic EIS signed February 24, 2011, ROD signed June 16, 2011. *http://www.coloradodot.info/projects/i-70mountaincorridor.*

(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).

John M. Cater,

Division Administrator, Lakewood, Colorado.

[FR Doc. 2012–9754 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 69]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of the RSAC Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Designated Federal Officer/Administrative Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Acting Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of November 28, 2011 (76 FR 72997). The 45th full RSAC meeting was held December 8, 2011, and the 46th meeting is scheduled for April 26, 2012, at the National Association of Home Builders, National Housing Center, located at 1201 15th Street NW., Washington, DC 20005.

Since its first meeting in April 1996, the RSAC has accepted 38 tasks. Status for each of the open tasks (neither completed nor terminated) is provided below:

Open Tasks

Task 96–4–Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a working group was established. The working group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact: Robert Lauby, (202) 493–6474.*

Task 03–01–Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This task was accepted on May 20, 2003, and a working group was established. Prior to embarking on substantive discussions of a specific task, the working group set forth in writing a specific description of the task. The working group reports planned activity to the full RSAC at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting, held on September 9–10, 2003, a consolidated list of issues was completed. At the second meeting, held on November 6–7, 2003, four task groups were established: Emergency Preparedness, Mechanical, Crashworthiness, and Track/Vehicle Interaction. The task forces met and reported on activities for working group consideration at the third meeting, held on May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The working group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on General Passenger Safety. The full Passenger Safety Working Group met on April 17–18, 2007; December 11–12, 2007; November 13, 2008; and June 8, 2009. On August 5, 2009, the working group was requested to establish an Engineering Task Force (ETF) to consider technical criteria and procedures for qualifying alternative passenger equipment designs as equivalent in safety to equipment meeting the design standards in the Passenger Equipment Safety Standards. Consensus Tier III recommendations of the ETF were developed and were approved at a meeting on October 6–7, 2011, by the Passenger Safety Working Group, and these recommendations were approved by the full RSAC Committee by electronic vote on March 2, 2012. These recommendations address safety issues related to high-speed rail trainsets used in the United States. No additional meetings are currently scheduled. *Contact: Charles Bielitz, (202) 493–6314.*

Engineering Task Force. The Passenger Safety Working Group approved a request from FRA to establish an ETF under the Passenger Safety Working Group in August 2009. The mission of the task force is to produce a set of technical evaluation criteria and procedures for passenger rail equipment built to alternative designs. The technical evaluation criteria and procedures would provide a means of establishing whether an alternative design would result in performance at least equal to the structural design standards set forth in the Passenger Equipment Safety Standards (Title 49 Code of Federal Regulations (CFR) Part 238). The initial focus of this effort will be on Tier I standards. When completed, the criteria and procedures would form a technical basis for making determinations concerning equivalent safety pursuant to 49 CFR 238.201, and provide a technical framework for presenting evidence to FRA in support of any request for waiver of the compressive (buff) strength requirement, as set forth in 49 CFR 238.203. *See* 49 CFR Part 211, Rules of Practice. The criteria and procedures could be incorporated into Part 238 at a later date after notice and opportunity for public comment. The ETF was formed and a kickoff meeting was held on September 23–24, 2009. The group held follow-on meetings November 3–4, 2009; January 7–8, 2010; and March 9–10, 2010. A followup GoTo/Webinar meeting was held on July 12, 2010. The ETF developed a draft ''*Criteria and Procedures Report,*'' that was approved by the Passenger Safety

Working Group during the September 16, 2010, meeting and by the RSAC Committee during the September 23, 2010, meeting. The document has been placed on the FRA Web site at the following address: *http://www.fra.dot.gov/downloads/safety/RSAC_REPORT-%209-16-10.pdf.*

Engineering Task Force II. To build on the success of the ETF in developing a set of alternative technical criteria and procedures for evaluating the crashworthiness and occupant protection performance of passenger rail equipment in service at conventional operating speeds, FRA requested that the Passenger Safety Working Group re-task the group to concentrate on developing crashworthiness and occupant protection safety recommendations for high-speed passenger trains. The Passenger Safety Working Group accepted the task on July 28, 2010, by electronic vote. Under the new task, the task force may address any safety features of the equipment, including but not limited to crashworthiness, interior occupant protection, glazing, emergency egress, and fire safety features. Any type of equipment may be addressed, including conventional locomotives, high-speed power cars, cab cars, multiple-unit (MU) locomotives, and coach cars. The equipment addressed may be used in any type of passenger service, from conventional-speed to high-speed. Recommendations may take the form of criteria and procedures, revisions to existing regulations, or adoption of new regulations, including rules of particular applicability. The work of the re-tasked ETF is intended to assist FRA in developing appropriate safety standards for the high-speed rail projects planned in California and Nevada. The ETF II held a kickoff meeting on October 21–22, 2010, to begin work on the new high-speed task, and had follow-on meetings on January 11–12, 2011, February 14–15, March 30–31, June 16–17, and October 6–7, 2011. Consensus Tier III recommendations of the ETF were developed and were accepted by vote during the meeting on October 6–7, 2011. The ETF II has formed two additional Task Groups to work in the areas of track worthiness and brakes. The Track Worthiness Task Group is tasked to identify potential safety issues related to operation of high-speed trainsets on conventional track and to make recommendations on how best to mitigate any consequences. The Task Group includes experts and key stakeholders such as international operators of high-speed equipment, car builders, wheel/rail interaction dynamics specialists, and other RSAC working group members involved in vehicle/track interaction. The Brakes Task Group is tasked to review braking system requirements and international braking system requirements versus existing U.S. requirements including inspection and maintenance and identify common features, determine basic parameters, and consider use of service proven braking systems. The Task Group will also consider performance-based provisions/requirements with consideration for operators to develop maintenance, inspection, and service plans, and make recommendations regarding brakes to the ETF II as related to Tier III. The next ETF meeting will be scheduled for June 2012. *Contact: Robert Lauby, (202) 493–6474.*

Emergency Preparedness Task Force. At the working group meeting on March 9–10, 2005, the working group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress, and rescue access. These recommendations were presented to and approved by the full RSAC on May 18, 2005. The working group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006 (71 FR 50275), and was open for comment until October 23, 2006. The working group agreed upon recommendations for the final rule, including resolution of final comments received, during the April 17–18, 2007, meeting. The recommendations were presented to and approved by the full RSAC on June 26, 2007. The Passenger Train Emergency Systems final rule, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The task force met on October 17–18, 2007, and reached consensus on the draft rule text for a followup NPRM on Passenger Train Emergency Systems, focusing on low location emergency exit path marking, emergency lighting, and emergency signage. The task force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to, and approved by full RSAC vote during the February 20, 2008, meeting. During the May 13–14, 2008, meeting, the task force recommended clarifying the applicability of back-up emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The working group ratified these recommendations on June 19, 2008. The task force met again on March 31, 2009, to clarify issues related to the followup NPRM raised by members. The modified rule text was presented to and approved by the Passenger Safety Working Group on June 8, 2009. The working group requested that FRA draft the rule text requiring daily inspection of removable panels or windows in vestibule doors and entrust the Emergency Preparedness Task Force with reviewing the text. FRA sent the draft text to the task force for review and comment on August 4, 2009. The draft rule text was approved by the Passenger Safety Working Group by mail ballot on December 23, 2009, and the resultant NPRM was published January 3, 2012 (77 FR 154). No additional task force meetings are currently scheduled. *Contact: Brenda Moscoso, (202) 493–6282.*

Mechanical Task Force—Completed. Initial recommendations on mechanical issues (revisions to 49 CFR Part 238) were approved by the full RSAC on January 26, 2005. At the working group meeting on September 7–8, 2005, the task force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

Crashworthiness Task Force—Completed. Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static-end strength that were adopted by the working group on September 7–8, 2005. The full RSAC accepted the recommendations on October 11, 2005. The front-end strength of cab cars and MU locomotives' NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007. A number of comments were entered into the docket, and a Crashworthiness Task Force meeting was held September 9, 2008, to resolve comments on the NPRM. Based on the consensus language agreed to at the meeting, FRA has prepared the text of the final rule incorporating the resolutions made at the task force meeting and the final rule language was adopted at the Passenger Safety Working Group meeting held on November 13, 2008. The language was presented and

approved at the December 10, 2008, full RSAC meeting. The final rule was issued on December 31, 2009, and published on January 8, 2010 (75 FR 1180). *Contact: Gary Fairbanks, (202) 493–6322.*

Vehicle/Track Interaction Task Force. The task force is developing proposed revisions to 49 CFR Parts 213 and 238, principally regarding high-speed passenger service. The task force met on October 9–11, 2007, and again on November 19–20, 2007, in Washington, DC, and presented the final task force report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the working group and were presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met on February 27–28, 2008, and by teleconference on March 18, 2010, to address unresolved issues, and the NPRM was published on May 10, 2010 (75 FR 25928). The task force was called back into session on August 5–6, 2010, to review and consider NPRM comments. The final rule will amend the Track Safety Standards and Passenger Equipment Safety Standards for high-speed train operations and train operations at high cant deficiencies to promote the safe interaction of rail vehicles with the track over which they operate. It will revise both the safety limits for these operations and the process to qualify them. It accounts for a range of vehicle types that are currently used and may likely be used on future high-speed or high cant deficiency rail operations, and would provide safety assurance for train operations in all classes of track. It is based on the results of simulation studies designed to identify track geometry irregularities associated with unsafe wheel forces and acceleration, thorough reviews of vehicle qualification and revenue service test data, and consideration of international practices. The draft final rule was sent to the task force for final consensus on November 11, 2011, and was approved by electronic vote on November 21, 2011. The draft final rule was then approved by electronic vote by the Passenger Safety Working Group on December 12, 2011, and by the full RSAC Committee by electronic vote on January 6, 2012. Target publication date of the final rule is June 2012. *Contact: John Mardente, (202) 493–1335.*

General Passenger Safety Task Force. At the Passenger Safety Working Group meeting on April 17–18, 2007, the task force presented a progress report to the working group. The task force met on July 18–19, 2007, and afterwards it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the working group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR Part 225 accident/incident cause codes on October 25, 2007. The General Passenger Safety Task Force presented draft guidance material for management of the gap that was considered and approved by the working group during the December 11–12, 2007, meeting and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met April 23–24, 2008, December 3–4, 2008, April 21–23, 2009, October 7–8, 2009, and July 30, 2010, by GoTo/Webinar teleconference. The task force continues work on passenger train door securement, ''second train in station'', trespasser incidents, and system safety-based solutions by developing a regulatory approach to system safety. The task force has created two task groups to focus on these issues.

The Door Safety Task Group has reached consensus on 47 out of 48 safety issues and had five items that have been remanded to the task force for vote. The issues are addressed in the area of passenger train door mechanical and operational requirements and presented draft regulatory language to the Passenger Safety Working Group at the September 16, 2010, meeting. More work remains to ensure the 49 CFR Part 238 door rule consensus document and the proposed American Public Transit Association (APTA) door standard (APTA SS–M–18–10) uses uniform language. The document was approved by the Passenger Safety Working Group by electronic vote on March 31, 2011, and approved by the RSAC on May 20, 2011. This rulemaking would amend the passenger equipment safety standards to enhance safety standards as they relate to passenger door securement while a passenger train is in service based on research and experiences of FRA safety inspectors. Specifically, FRA would incorporate by reference APTA standard: ''APTA SS–M–18–10 Standard for Powered Exterior Side Door System Design for New Passenger Cars.'' A draft NPRM is currently under development with a target publication date of May 2012. No additional Door Task Group meetings are currently scheduled. *Contact: Brian Hontz, (610) 521–8220.*

The System Safety Task Group has produced draft regulatory language for a System Safety Rule, but work on this rulemaking was delayed until a study of legal protections for Risk Reduction Program (RRP) and System Safety Program (SSP) risk analysis data that is required by the Rail Safety Improvement Act of 2008 (RSIA) was completed. The System Safety rulemaking would improve passenger railroad safety through structured, proactive processes and procedures developed by passenger railroad operators. It would require passenger railroads to establish an SSP that would systematically evaluate and manage risks in order to reduce the number and rates of railroad accidents, incidents, injuries, and fatalities. FRA continued to work on a draft NPRM while waiting for the legal review of protection of hazard analysis information, required by Section 109 of the RSIA. RCC completed a legal study and posted it on the FRA Web site and in the docket. The General Passenger Safety Task Force including the members of the System Safety Task Group met on February 1–2, 2012, and continued work on finalizing the draft NPRM language. A draft NPRM is being prepared with a target date of August 2012 for publication. No additional System Safety Task Group meetings are currently scheduled. *Contact: Dan Knote, (631) 567–1596.*

Task 05–01—Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR Part 214, Subpart C, Roadway Worker Protection (RWP), and related sections of Subpart A; to recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A working group was established and reported to the RSAC any specific actions identified as appropriate. The first meeting of the working group was held on April 12–14, 2005. Over the course of 2 years, the group drafted and reached consensus on regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding one of those items, namely, the draft language concerning electronic display of track authorities. The working group presented and received approval on all of its consensus recommendations for draft rule text to the full RSAC at the June 26, 2007, meeting. FRA will address the electronic display of track authorities issue, along with eight additional items that the working group was unable to reach consensus, through the traditional

NPRM process. In early 2008, the external working group members were solicited to review the consensus rule text for errata review. In order to address the heightened concerns raised with the current regulations for adjacent-track, on-track safety, FRA decided to issue, on an accelerated basis, a separate NPRM that would focus on this element of the RWP rule alone. An NPRM with an abbreviated comment period regarding adjacent-track, on-track safety was published on July 17, 2008, but was later withdrawn on August 13, 2008, to permit further consideration of the RSAC consensus language. A second NPRM concerning adjacent-controlled-track, on-track safety was published on November 25, 2009, and comments were due to the docket by January 25, 2010. Comments were reviewed and considered by FRA, and the final rule was published on November 30, 2011 (76 FR 74586). In response to the final rule, FRA received two petitions for reconsideration that raise a number of substantive issues requiring a detailed response. A delay of the effective date of the final rule and a request for comments was published on March 8, 2012 (77 FR 13978). This document delays the effective date of the final rule until July 1, 201,3 and establishes a 60-day comment period in order to permit interested parties an opportunity to respond to the submitted petitions for reconsideration.

The remaining larger NPRM relating to the various revisions, clarifications, and additions to 31 separate items in 19 sections of the rule, and FRA's recommendations for 9 nonconsensus items is now planned for early 2012. *Contact: Joe Riley, (202) 493–6357.*

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed, and the working group extensively reviewed the issues presented. The final working group meeting devoted to developing a proposed rule was held February 8–9, 2006. The working group was not able to deliver a consensus regulatory proposal, but it did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (FR 71 60372), with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, and one on April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC at the June 26, 2007, meeting. A final rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442), with an effective date of April 14, 2008. FRA received four petitions for reconsideration of that final rule. The final rule that responded to the petitions for consideration was published in the **Federal Register** on June 16, 2008, and concluded the rulemaking. Working group meetings were held September 27–28, 2007; January 17–18, 2008; May 21–22, 2008; and September 25–26, 2008. The working group has considered issues related to issuance of Emergency Order No. 26 (prohibition on use of certain electronic devices while on duty), and ''after arrival mandatory directives,'' among other issues. The working group continues to work on after arrival orders, and at the September 25–26, 2008, meeting voted to create a Highway-Rail Grade Crossing Task Force to review highway-rail grade crossing accident reports regarding incidents of grade crossing warning systems providing ''short or no warning'' resulting from or contributed to ''by train operational issues'' with the intent to recommend new accident/incident reporting codes that would better explain such events, and which may provide information for remedial action going forward. A followup task is to review and provide recommendations regarding supplementary reporting of train operations-related, no-warning or short-warning incidents that are not technically warning system activation failures, but that result in an accident/incident or a near miss. The task force has been formed and will begin work after other RSIA priorities are met. *Contact: Douglas Taylor, (202) 493–6255.*

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A working group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects and progress toward completion. The first working group meeting was held May 8–10, 2006. Working group meetings were held on August 8–9, 2006; September 25–26, 2006; October 30–31, 2006; and the working group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the working group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The working group met on January 9–10, 2007; November 27–28, 2007; February 5–6, 2008; May 20–21, 2008; August 5–6, 2008; October 22–23, 2008; January 6–7, 2009; and April 15–16, 2009. The working group has now completed the review of 49 CFR Part 229 and was unable to reach consensus regarding locomotive cab temperatures standards, locomotive alerters, and remote control locomotives. The group reached consensus regarding critical locomotive electronic standards, updated annual/biennial air brake standards, clarification of the ''air brakes operate as intended'' requirement, locomotive pilot clearance within hump classification yards, clarification of the ''high voltage'' warning requirement, an update of ''headlight lamp'' requirements, and language to allow locomotive records to be stored electronically. The working group presented a draft 49 CFR Part 229 rule text revision covering these items to the RSAC for consideration at the September 10, 2009, meeting and received approval. The NPRM was delayed due to competing RSIA priorities and the need for additional language. The NPRM was published on January 12, 2011 (76 FR 2200), and the final rule is scheduled to be published in early 2012. This rulemaking would amend the rules pertaining to the Locomotive Safety Standards. The proposed amendments would update, consolidate, and clarify existing rules, and adopt existing industry and engineering best practices. The proposed amendments include: updating locomotive inspection recordkeeping requirements by permitting electronic records; consolidating locomotive air brake maintenance into a single provision; clarifying locomotive headlight requirements to address new technology; and, establishing locomotive electronics standards based on existing industry and engineering best practices, as well as other existing Federal electronics standards. This action is taken by FRA in an effort to improve its safety regulator program. The working group may be called back to address comments received on the final rule after publication. *Contact: Steve Clay, (202) 493–6259.*

Task 06–03—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical

fitness for duty of personnel engaged in safety-critical functions. A working group was established by the full RSAC and reports its activities and progress toward completion of this task to the full RSAC during each meeting of the full RSAC. The first working group meeting was held December 12–13, 2006, and the working group has held follow-on meetings on February 20–21, 2007; July 24–25, 2007; August 29–30, 2007; October 31–November 1, 2007; December 4–5, 2007; February 13–14, 2008; March 26–27, 2008; April 22–23, 2008; December 8–9, 2009; February 16–17, 2010; March 11–12, 2010; May 24–26, 2010; August 31–September 1, 2010; November 18–19, 2010; and September 27–28, 2011. During the working group's September 2011 meeting, the working group discussed stakeholder positions on the draft rule text and draft medical qualification criteria and protocols, and a preliminary cost-benefit analysis was presented to the working group by the FRA economist. The working group tentatively agreed to proceed to revise its draft recommendations to include a proposed option that the medical qualification criteria be issued as medical qualification guidelines rather than standards. The working group established a task force to draft proposed revisions to working draft documents to be presented to the working group for review and comment. The next working group meeting has not currently been scheduled due to other priority RSIA projects. *Contact: Dr. Bernard Arseneau, (202) 493–6002.*

Physicians Task Force. A Physicians Task Force was established by the working group in May 2007, and tasked to draft recommended medical qualification criteria and protocols for locomotive engineers and conductors. The Physicians Task Force has had meetings or conference calls on July 24, 2007; August 20, 2007; October 15, 2007; October 31, 2007; June 23–24, 2008; September 8–10, 2008; October 8, 2008; November 12–13, 2008; December 8–10, 2008; January 27–28, 2009; February 24–25, 2009; March 11–12, 2009; March 31–April 1, 2009; April 15, 2009; April 22, 2009; May 13, 2009; May 20, 2009; June 17, 2009; January 21–22, 2010; March 3, 2010; August 16–17, 2010; and October 25–26, 2010; December 17, 2010; January 11, 2011; March 3–4, 2011; May 16–17, 2011; August 18, 2011; August 25, 2011; August 31, 2011. On September 1, 2011, the task force notified working group members that it had made significant progress in completing its task and requested that the working group participate in clarifying a limited number of remaining operational issues relevant to the task that merited review by industry management, labor, and other stakeholders. No further meetings of the Physicians Task Force are currently scheduled. *Contact: Dr. Bernard Arseneau, (202) 493–6002.*

Critical Incident Task Force. The Medical Standards Working Group accepted RSAC Task 2009–02, Critical Incident Response, during the December 8–9, 2010, meeting. The working group has been tasked to provide advice regarding development of implementing regulations for critical incident stress plans as required by the RSIA. A Critical Incident Task Force was established by the working group during the May 24–26, 2010, Medical Standards Working Group meeting. The scheduled kickoff meeting for the Critical Incident Task Force scheduled for September 2, 2010, was postponed at the request of industry participants. In late March 2011, FRA leadership decided to request that the RSAC be asked to amend the Critical Incident task statement to remove reference to the Medical Standards Working Group and to allow the group to assume full working group status to expedite the work. The Committee approved the revised task statement with a target date for recommendations to the Committee of December 2011, and the task force transitioned to the Critical Incident Working Group. (See Critical Incident Working Group entry.) *Contact: Dr. Bernard Arseneau, (202) 493–6002.*

Task 08–03—Track Safety Standards Rail Integrity. This task was accepted on September 10, 2008, to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. The Rail Integrity Task Force was created in October 2007 under Task 07–01 and first met on November 28–29, 2007. The task force met on February 12–13, 2008; April 15–16, 2008; July 8–9, 2008; September 16–17, 2008; February 3–4, 2009; June 16–17, 2009; October 29–30, 2009; January 20–21, 2010; March 9–11, 2010; and April 20, 2010. Consensus has been achieved on bond wires and a common understanding on internal rail flaw inspections has been reached. The task force has reached consensus to recommend to the working group that the item regarding ''the effect of rail head wear, surface conditions and other relevant factors on the acquisition and interpretation of internal rail flaw test results'' be closed. The task force does not recommend regulatory action concerning head wear. Surface conditions and their affect on test integrity has been discussed and understood during dialogue concerning common understanding on internal rail flaw inspections. The task force believes that new technology has been developed that improves test performance and will impact the affect of head wear and surface conditions on interpretation of internal rail flaw test results. Consensus text was developed on recommended changes that would approach a performance-based approach to flaw detection scheduling. However, the group did not reach consensus on what length of segment of track is practical to use on determining test cycles. Consensus text has been finalized for recommended changes to 49 CFR 213.113, Defective rails; 213.237, Rail inspection; and 213.241, Inspection records. The task force has developed a new 49 CFR 213.238, Qualified operator language, that defines the minimum requirements for the training of a rail flaw detector car operator. The task force presented the consensus language to the Track Standards Working Group during the July 28–30, 2010, meeting and the Track Standards Working Group presented its consensus recommendations to the RSAC for approval during the September 23, 2010, Committee meeting. By majority vote, the RSAC accepted the recommendations of the Track Standards Working Group and forwarded those recommendations to the Administrator completing RSAC Task 08–03. The associated NPRM is currently in the final stages of development with an anticipated spring issue date, and RSAC Task 08–03 will be complete once the final rule is issued. *Contact: Carlo Patrick, (202) 493–6399.*

Task No. 08–07—Conductor Certification. This task was accepted on December 10, 2008, to develop regulations for certification of railroad conductors, as required by the RSIA, and to consider any appropriate related amendments to existing regulations and report recommendations for proposed or interim final rule (as determined by FRA in consultation with the Office of the Secretary of Transportation (OST) and the Office of Management and Budget (OMB)) by October 16, 2009. The Conductor Certification Working Group was officially formed by nominations from member organizations in April 2009, and the first meeting was held on July 21–23, 2009. Additional meetings were held on August 25–27, 2009; September 15–17, 2009; October 20–22, 2009; November 17–19, 2009; and December 16–18, 2009. Tentative consensus was reached on the vast majority of the regulatory text. The working group approved the draft rule

text by electronic ballot and the consensus draft language was approved by the RSAC on March 18, 2010, by unanimous vote as the recommendation from the Committee to the FRA Administrator. The resulting NPRM was published in the **Federal Register** on November 10, 2010 (75 FR 69166), the working group was called back to meet and review comments received on May 12, 2011, and the final rule is currently under development with a target publication date of November 2012. This rulemaking would provide rules and guidance for requisite train conductor certification to ensure that individuals have the knowledge and skills necessary to perform the duties of a train conductor. This rulemaking may propose that each railroad adopt and comply with a written program for certifying and recertifying the qualifications of conductors. After the final rule is published, the working group will reconvene to make conforming amendments to the locomotive engineer certification regulation as appropriate. *Contact: Mark McKeon, (202) 493–6350.*

Task No. 09–02—Critical Incident Programs. This task was accepted on September 10, 2009, to provide advice regarding development of implementing regulations for Critical Incident Stress Plans as required by the RSIA. The group has been tasked to define what a ''critical incident'' is that requires a response; review available data, literature, and standards of practice concerning critical incident programs to determine appropriate action when a railroad employee is involved in or directly witnesses a critical incident; review any evaluation studies available for existing railroad critical incident programs; describe program elements appropriate for the rail environment, including those requirements set forth in the RSIA; provide an example of a suitable plan (template); and assist in the preparation of an NPRM no later than December 2010. In late March 2011, FRA leadership requested that the RSAC amend the Critical Incident task statement to remove reference to the Medical Standards Working Group and to allow the group to assume full working group status to expedite the work. The Committee approved the revised task statement with a target date for recommendations to the Committee of December 2011. The Critical Incident Working Group kickoff meeting was held on June 24, 2011. The draft report assessing current knowledge of post-traumatic interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposure in the railroad setting was completed and distributed to the working group prior to the September 8–9, 2011, working group meeting. Due to the aggressive timeline, the working group held its second meeting on October 11–12, 2011, and held a follow-on meeting December 13, 2011. The grantee provided a report entitled ''Proposed Key Elements of Critical Incident Intervention Program for Reducing the Effects of Potentially Traumatic Exposure on Train Crews to Grade Crossing and Trespasser Incidents'' to the Critical Incident Working Group on December 13, 2011. A proposed rule based on the study recommendations is currently under development with the assistance of the Critical Incident Working Group. *Contact: Ron Hynes, (202) 493–6404.*

Task No. 10–01—Minimum Training Standards and Plans. This task was accepted on March 18, 2010, to establish minimum training standards for each class and craft of safety-related railroad employee and their railroad contractor and subcontractor equivalents, as required by the RSIA. The group has been tasked to assist FRA in developing regulations responsive to the legislative mandate, while ensuring that generally accepted principles of adult learning are employed in training and development and delivery; determine a reasonable method for submission and FRA review of training plans, which takes human resource limitations into account; establish reasonable oversight criteria to ensure training plans are effective, using the operational tests and inspections requirements of 49 CFR Part 217 as a model. The Training Standards Working Group was officially formed through the formal Committee member nomination process in March 2010, and the first meeting was held on April 13–14, 2010. A followup working group meeting was held on June 2–3, 2010, and additional followup meetings were held August 17–18 and September 21–22, 2010. A Task Analysis Task Force was formed under the working group to develop a task analysis template and met in Florence, KY, on June 22–23, 2010, with CSX Transportation hosting the event. The group developed a 21-page task analysis document for an outbound train yard carman position, which is complete regarding FRA railroad safety laws, regulations, and orders. The working group met August 17–18, and October 19–20, 2010, and by GoTo/Webinar on November 15–16, 2010. The working group reached consensus and the resulting training standards draft regulatory language was presented to and approved by the RSAC Committee on December 14, 2010. This rulemaking will (1) establish minimum training standards for each class or craft of safety-related employee and equivalent railroad contractor and subcontractor employee that require railroads, contractors, and subcontractors to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge and ability to comply with Federal railroad safety laws and regulations and railroad rules and procedures intended to implement those laws and regulations, etc.; (2) require submission of railroads', contractors', and subcontractors' training and qualification programs for FRA approval; and (3) establish a minimum training curriculum and ongoing training criteria, testing, and skills evaluation measures for track and equipment inspectors employed by railroads and railroad contractor and subcontractors. The resulting NPRM was published February 7, 2012 (77 FR 6411), with comments on the proposed rule due by April 9, 2012. No additional working group meetings are scheduled at this time. *Contact: Rob Castiglione, (817) 447–2715.*

Task No. 10–02—Safety Technology in Dark Territory. This task was accepted on September 23, 2010, to provide advice regarding development of standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, as required by Section 406 of the RSIA. Specifically, to assist FRA in developing regulations responsive to the legislative mandate and to report recommendations to the FRA Administrator for proposed or interim final rule (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by September 30, 2011. This rulemaking would issue standards or guidance governing development and deployment of technology to promote safe operation in non-signaled territory in arrangements not defined in signal inspection law. The delay in starting this effort was caused by the PTC rulemaking, which required the same key personnel both in government and industry. With the PTC effort maturing, resources became available and the Dark Territory Working Group was formed to assist FRA in developing regulations responsive to the legislative mandate and to report recommendations to the FRA Administrator for proposed or interim final rule (as determined by FRA in consultation with OST and OMB). The working group met on

March 3–4, 2011, May 9–10, 2011, and September 6–7, 2011, and created four task forces to investigate specific subject areas. A follow-on meeting was held November 17–18, 2011, and a proposed rule is currently under development with the assistance of the Dark Territory Working Group. *Contact: Olga Cataldi, (202) 493–6321.*

Task No. 11–01—Preventing Railroad Employee Distractions Caused by Personal Electronic Devices. This task was accepted on May 20, 2011, to prescribe mitigation strategies, programs, and processes for governing the use of personal electronic devices that could cause distractions to railroad employees engaged in safety-critical activities. This working group will explore additional methods to achieve compliance through education, peer-to-peer coaching, counseling, and other cooperative, non-regulatory/punitive methods. The Electronic Device Distraction Working Group was formed and held its kickoff meeting on October 25–26, 2011, and held follow-on meetings on January 11–12, and March 27, 2012. Work on this task has progressed well and the working group is on target to present its recommendations to the Committee during the April 2012 RSAC meeting. *Contact: Miriam Kloeppel, (202) 493–6224.*

Task No. 11–02—Track Inspection Time Study. This task was accepted by the Committee electronically on August 16, 2011, to consider specific improvements to the Track Safety Standards or other responsive actions related to the Track Inspection Time Study required by Sections 403(a)–(c) of the RSIA and other relevant studies and resources. Sections 403(a) and (b) of the RSIA required a study of inspection practices and the amount of time required for inspections under the Track Safety Standards, and another set of revisions to those regulations. The report was due by October 16, 2010, on the results of a specified track inspection time and track safety study. FRA is expected to make recommendations for rule changes and, under Section 403(c), not later than 2 years after completion of the study, prescribe regulations based on its results. FRA organized an independent study by an outside contractor and developed a questionnaire used to get information from railroad track inspectors throughout the country; interviews with railroad and union officials were also conducted for additional perspectives. The Track Inspection Time Study was completed and signed by the Secretary on May 2, 2011, starting the 2-year timeline for rulemaking. The task was given to the Track Standards Working Group and it held a kickoff meeting on October 20, 2011, and follow-on meetings were held on December 20–21, 2011; and February 7–8, 2012. No further meetings are currently scheduled and the working group is on schedule to provide recommendations to the Committee no later than May 2, 2012. *Contact: Michael Lestingi, (202) 493–6236.*

Task No. 11–03—Fatigue Management Plans. This task was accepted by the Committee on December 8, 2011, to provide advice regarding development of implementing regulations for Fatigue Management Plans and their deployment under the RSIA. The working group was formed and held its kick-off meeting on March 27, 2012. The working group is tasked to report recommendations to the Committee no later than February 2013. *Contact: Miriam Kloeppel, (202) 493–6224.*

Task No. 11–04—Risk Reduction Program. This task was accepted by the Committee on December 8, 2011, to develop requirements for certain railroads to develop a Risk Reduction Program as mandated by the RSIA. The working group was formed and held its kick-off meeting on January 31–February 1, 2012, and a follow-on meeting is scheduled for April 10–11, 2012. *Contact: Miriam Kloeppel, (202) 493–6224.*

Completed Tasks

Task 96–1—(Completed) Revising the freight power brake regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing locomotive engineer certification (49 CFR Part 240).

Task 96–7—(Completed) Developing roadway maintenance machines (on-track equipment) safety standards.

Task 96–8—(Completed) This planning task evaluated the need for action responsive to recommendations contained in a report to Congress titled, *Locomotive Crashworthiness & Working Conditions.*

Task 97–1—(Completed) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5*—(Completed) Defining PTC functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Completed–task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports* (Reporting Guide).

Task 06–02—(Completed) Track Safety Standards and CWR. Issue requirements for inspection of joint bars in CWR to detect cracks that could affect the integrity of the track structure published a final rule on August 25, 2009, with correcting amendment published on October 21, 2009.

Task 07–01—(Completed) Track Safety Standards. Consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on continuous welded rail (CWR) specifically to: Review controls applied to the reuse of rail in CWR ''plug rail''; review the issue of cracks emanating from bond wire attachments; consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and ensure a common

understanding within the regulated community concerning requirements for internal rail flaw inspections. The Concrete Crossties NPRM was published on August 26, 2010 (75 FR 52490), and the final rule was issued on April 1, 2011 (76 FR 18073), with an effective date of July 1, 2011. FRA received two petitions for reconsideration in response to the final rule, and as a result published a second final rule on June 15, 2011 (76 FR 34890), delaying the effective date of the final rule until October 1, 2011.

Task 08–01—(Completed) Report on the Nation's railroad bridges. Report to FRA on the current state of railroad bridge safety management; update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey.

Task No. 08–04—(Completed) Positive Train Control. Provide advice regarding development of implementing regulations for PTC systems and their deployment under the RSIA. The PTC consensus rule text was approved by majority RSAC vote by electronic ballot on September 24, 2009, and the final rule was published on January 15, 2010 (75 FR 2598). Final rule amendments were published on September 27, 2010 (75 FR 59108). An NPRM proposing amendments to the PTC Final Rule that would remove various regulatory requirements that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that do not transport poison- or toxic-by-inhalation hazardous materials traffic, and are not used for intercity or commuter rail passenger transportation, as of December 31, 2015, was published on August 24, 2011 (76 FR 52918), with comments due by October 24, 2011.

Task No. 08–05—(Completed) Railroad Bridge Safety Assurance. Develop a rule encompassing the requirements of Section 417 of the RSIA (Railroad Bridge Safety Assurance), of RSIA bridge failure. Final rule published July 15, 2010 (75 FR–41282).

Task No. 08–06—(Completed) Hours of Service Recordkeeping and Reporting. Develop revised recordkeeping and reporting requirements for hours of service of railroad employees. Final rule published May 27, 2009, with an effective date of July 16, 2009. (74 FR 25330).

Task No. 09–01—(Completed) Passenger Hours of Service. Provide advice regarding development of implementing regulations for the hours of service of operating employees of commuter and intercity passenger railroads under the RSIA. The NPRM was published on March 22, 2011 (76 FR 16200), and the final rule was published on August 12, 2011 (76 FR 50360), with an effective date of October 15, 2011.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012–9625 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0040, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Left-Hand Drive 2006 Land Rover Range Rover Multi-Purpose Passenger Vehicles Manufactured Prior to September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that left-hand drive (LHD) 2006 Land Rover Range Rover multi-purpose passenger vehicles (MPVs) manufactured prior to September 1, 2006 for sale in the United Kingdom and other foreign markets that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2006 Land Rover Range Rover MPV) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 23, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless

NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming LHD 2006 Land Rover Range Rover MPVs are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2006 Land Rover Range Rover MPVs that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified LHD 2006 Land Rover Range Rover MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified LHD 2006 Land Rover Range Rover MPVs, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified LHD 2006 Land Rover Range Rover MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 119 *New Pneumatic Tires for Vehicles other than passenger Cars,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls Telltales, and Indicators:* inscription of the word ''brake'' on the brake telltale in place of the international ECE warning symbol. Inspection of all vehicles and installation of U.S.-model speedometer and odometer, or modification of the existing speedometer and odometer to conform with the requirements of this standard, if required.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamps and tail lamps that incorporate side marker lamps. The petitioner states that the vehicle is already equipped with a center high mounted stop lamp.

Standard No. 111 *Rearview Mirrors:* inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* reprogramming of the instrument cluster to activate the warning buzzer whenever the key is left in the ignition and the driver's door is opened.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire and rim information placard.

Standard No. 301 *Fuel System Integrity:* installation of a U.S.-model rollover valve.

The petitioner states that each vehicle will be inspected prior to importation for compliance with the Theft Prevention Standard in 49 CFR part 541 and that anti-theft devices will be installed on all vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565 and that a certification label must be affixed to the driver's door jamb to meet the requirements of 49 CFR part 567.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 16, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–9683 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0058; Notice 1]

Toyota Motor Corporation, Inc., on Behalf of Toyota Corporation, and Toyota Manufacturing, Indiana, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Toyota Motor North America, Inc., on behalf of Toyota Motor Corporation,[1] and Toyota Manufacturing, Indiana, Inc.[2] (collectively referred to as ''Toyota'') has determined that certain model year 2011 Toyota Sienna passenger cars manufactured between January 3, 2011 and February 11, 2011, do not fully comply with paragraph S9.5(a)(3) of Federal Motor Vehicle Safety Standard (FMVSS) No. 225, *Child restraint anchorage systems.* Toyota has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated March 17, 2011).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Toyota has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Toyota's petition is published under 49 U.S.C.

[1] Toyota Motor Corporation is a Japanese corporation that manufacturers and imports motor vehicles.

[2] Toyota Manufacturing, Indiana, Inc., is an Indiana corporation that manufactures motor vehicles

30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 9,122 model year 2011 Toyota Sienna passenger cars that were manufactured between January 3, 2011 and February 11, 2011,

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 9,122 [3] model year 2011 Toyota Sienna passenger cars that Toyota no longer controlled at the time it determined that the noncompliance existed.

Paragraph S9.5 of FMVSS No. 225 requires in pertinent part:

S9.5 Marking and conspicuity of the lower anchorages. Each vehicle shall comply with S9.5(a) or (b). (a) Above each bar installed pursuant to S4, the vehicle shall be permanently marked with a circle * * *

(1) That is not less than 13 mm in diameter;

(2) That is either solid or open, with or without words, symbols or pictograms, provided that if words, symbols or pictograms are used, their meaning is explained to the consumer in writing, such as in the vehicle's owners manual; and

(3) That is located such that its center is on each seat back between 50 and 100 mm above or on the seat cushion 100 ±25 mm forward of the intersection of the vertical transverse and horizontal longitudinal planes intersecting at the horizontal centerline of each lower anchorage, as illustrated in Figure 22. The center of the circle must be in the vertical longitudinal plane that passes through the center of the bar (±25 mm);

(4) The circle may be on a tag * * *

Toyota explains that the noncompliance is that the label identifying the location of the lower child restraint anchorages in some of the second row seats of the affected vehicles are located slightly outside the limits as stated within the requirements of S9.5(a)(3) of FMVSS No. 225.

Specifically, Toyota also explains that ''the potential deviation of the label location outside the requirement is very small. In a detailed survey of a randomly selected subset involving 18 of these vehicles in which a deviation was observed, the mean deviation was approximately +1.4 mm (i.e. 26.4 mm from the centerline); the maximum deviation observed was +2.5 mm (i.e. 27.5 mm from the centerline); and the standard deviation was only 0.5 mm. While a survey carried out by the seat supplier also supports Toyota's assertions that the potential deviation of the label location from the specified requirements is very small. In the supplier's survey of 240 labels on 120 seats, 3 labels were outside of the specifications of FMVSS No. 225. All 3 of those labels were measured at +1 mm beyond the specification, or 26 mm from the centerline.''

Toyota stated its belief that although the lower child anchorage labels are outside the specified limits of this requirement that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The measured deviations are very minor, and such a slight deviation is not noticeable to consumers and would not impair a consumer's ability to locate the lower anchorages.

(2) Paragraph S9.1 of FMVSS No. 225 requires that the length of the straight portion of the lower anchorage bar be a minimum of 25 mm. In the affected vehicles the length is 30 mm; the total length including the curved portions is 54 mm. As a result, even with greater deviations than noted above in label location, some part of the label would be over some part of the bar, making the bar easy to locate.

(3) The regulatory history of the provision allowing a ±25 mm lateral tolerance for the location of the center of the circular label further supports the argument that this noncompliance has no adverse safety consequences. As originally adopted, FMVSS No. 225 would have limited the lateral tolerance to ±12 mm. In response to a petition for reconsideration from vehicle manufacturers concerned that such a low tolerance would be difficult to meet due to process limitations and seat design features, NHTSA amended the standard to allow the current ±25 mm tolerance. 69 FR 48818 (August 11, 2004). In doing so, The agency stated:

''* * * Moreover, the agency believes that increasing the tolerance to 25 mm will not significantly affect the consumers' ability to find the LATCH anchorages. While anchor bars are permitted to be as short as 25 mm in the straight portion of the bar, most are considerably longer. Even if a 25 mm bar were used, with a 25 mm tolerance from the center of the bar, the circle will be, at farthest, tangent to a longitudinal vertical plane tangent to the side of the anchorage bar. If a person were to probe the seat bight in the area directly under the marking circle, his or her finger would easily contact the bar. For bars that are greater than 25 mm in length, with a 25 mm tolerance a portion of the marking circle will always be over some part of the bar. In either situation, marking the circle with a 25 mm tolerance will adequately provide a visual reminder to consumers that the LATCH system is present and will help users locate and use the bars. Adopting the 25 mm tolerance will also harmonize FMVSS No. 225 with the comparable Transport Canada requirement.''

(4) The seat design is such that only one label at a seating position can be noncompliant. As the seat cover, is constructed, the labels are secured to the fabric a specified distance apart that reflects the location of each pair of anchorages, and the labels are designed to be within the lateral tolerance of the standard.

(5) Information provided in the vehicle owner's manual further reduces any possibility of confusion when installing a child restraint. The instructions clear advise the installer to recline the second row seat and widen the gap between the seat cushion and the seatback to expose the lower anchorages.

(6) The label locations are correct for the LATCH anchorage system located at the third row center seating position.[4]

(7) There have been no customer complaints, injuries, or accidents related to the deviation of the child restraint label location being slightly outside the limits of the requirement.

(8) The model year 2011 Sienna is sold by Toyota in both the United States and Canada and the subject noncompliance was reported to both NHTSA and Transport Canada at the same time. (In Canada, the applicable standard is CMVSS 210.2; it contains the same requirements as FMVSS No. 225). Transport Canada responded on March 23, indicating it concurs that ''there is no real or implied degradation to motor vehicle safety,'' and that no further action in Canada will be required.

In summation, Toyota believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 225 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as

[3] Toyota's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Toyota as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 9,122 of the affected vehicles. However, the agency cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed. Those vehicles must be brought into conformance, exported, or destroyed.

[4] Toyota indicated that this LATCH anchorage is not a required by the standard, but was voluntarily installed by Toyota.

required by 49 U.S.C. 30120 should be granted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 23, 2012.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8)

Issued on: April 16, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–9674 Filed 4–20–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8508

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8508, Request for Waiver From Filing Information Returns Electronically (Forms W–2, W–2G, 1042–S, 1098 Series, 1099 Series, 5498 Series, and 8027).

DATES: Written comments should be received on or before June 22, 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 the form and instructions should be directed to Allan Hopkins, (202) 622–6665 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: Request for Waiver From Filing Information Returns Electronically (Forms W–2, W–2G, 1042–S, 1098 Series, 1099 Series, 5498 Series, and 8027).

OMB Number: 1545–0957.

Form Number: Form 8508.

Abstract: Certain filers of information returns are required by law to file electronically. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, farms, Federal Government, State, Local or Tribal Government, and not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 750.

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: April 17, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–9610 Filed 4–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as members of the Internal Revenue Service Advisory Council (IRSAC). Nominations should describe and document the proposed member's qualification for IRSAC membership, including the applicant's knowledge of Circular 230 regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the council. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representatives on the IRSAC. The IRSAC is comprised of no more than thirty-five (35) appointed members; approximately seven of these appointments will expire in December 2012. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as areas of expertise, geographic diversity, major stakeholder representation and customer segments.

The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The council advises the IRS on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the IRS with respect to issues having substantive effect on federal tax administration.

DATES: Written applications will be accepted from May 1, 2012 through June 15, 2012.

ADDRESSES: Applications should be sent to National Public Liaison, CL:NPL:P, Room 7559 IR, 1111 Constitution Avenue NW., Washington, DC 20224, Attn: Lorenza Wilds; or by email: **public_liaison@irs.gov.* Applications may be submitted by mail to the address above or faxed to 202–927–4123. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at *http://www.irs.gov/taxpros/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, 202–622–6440 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRSAC was authorized under the Federal Advisory Committee Act, Public Law 92–463, the first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (''CAG'')—was established in 1953 as a ''national policy and/or issue advisory committee.'' Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues.

Conveying the public's perception of IRS activities, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, international, wage and investment taxpayers and the knowledge of Circular 230.

IRSAC members are nominated by the Commissioner of the Internal Revenue Service with the concurrence of the Secretary of the Treasury to serve a three year term. There are four subcommittees of IRSAC, the (Small Business/Self Employed (SB/SE); Large Business and International (LB&I); Wage & Investment (W&I); and the Office of Professional Responsibility (OPR).

Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

An acknowledgment of receipt will be sent to all applicants. In accordance with the Department of Treasury Directive 21–03, a clearance process including, annual tax checks, and a practitioner check with the Office of Professional Responsibility will be conducted. In addition, all applicants deemed ''best qualified'' will have to undergo a Federal Bureau of Investigation (FBI) fingerprint check. Federally-registered lobbyists cannot be members of the IRSAC.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities are welcomed for service on advisory committees; and therefore, extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: April 16, 2012.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2012–9606 Filed 4–20–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection (Dependents' Application for VA Educational Benefits) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 23, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0098'' in any correspondence

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue

NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0098.''

SUPPLEMENTARY INFORMATION:

Title: Dependents' Application for VA Educational Benefits (Under Provisions of Chapters 33 and 35, of title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5940 is completed by spouses, surviving spouses and children of veterans or servicemembers to apply for Survivors' and Dependents' Educational Assistance (DEA) and Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) benefits. VA will use the information collected to determine whether a claimant qualifies for DEA or Fry Scholarship benefits and if the program of education the applicant wishes to pursue is approved for assistance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2012, at page 3844.

Affected Public: Individuals or households

Estimated Annual Burden:

a. VA Form 22–5940—14,870.

b. Electronic submission—7,407.

Estimated Average Burden Per Respondent:

a. VA Form 22–5940—45 minutes.

b. Electronic submission—25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 22–5940—19,827.

b. Electronic submission—17,777.

Dated: April 18, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–9669 Filed 4–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Proposed Information Collection (Application for Accreditation as Service Organization Representative) Activity: Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel (OGC), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine accredited service organization representatives' qualification to represent claimants before VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Ken Lee, Office of General Counsel (02), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *ken.lee@va.gov*. Please refer to ''OMB Control No. 2900–0018'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ken Lee at (202) 461–7651 or FAX (202) 273–6404.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OGC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OGC's functions, including whether the information will have practical utility; (2) the accuracy of OGC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accreditation as Service Organization Representative, VA Form 21; Accreditation Cancellation Information.

OMB Control Number: 2900–0018.

Type of Review: Extension of a currently approved collection.

Abstract: Service organizations are required to file an application with VA to establish eligibility for accreditation for representatives of that organization to represent benefit claimants before VA. VA Form 21 is completed by service organizations to establish accreditation for representatives, recertify the qualifications of accredited representatives.

Organizations requesting cancellation of a representative's accreditation based on misconduct or incompetence or resignation to avoid cancellation of accreditation based upon misconduct or incompetence, are required to inform VA of the specific reason for the cancellation request. VA will use the information collected to determine whether service organizations representatives continue to meet regulatory eligibility requirements to ensure claimants have qualified representatives to assist in the preparation, presentation and prosecution of their claims for benefits.

Affected Public: Not-for profit institutions.

Estimated Annual Burden: 1,003 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,780.

Dated: April 18, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–9670 Filed 4–20–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (26–1852)]

Proposed Information Collection (Description of Materials) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed collection, in use without an OMB number and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine if proposed construction material meets regulatory requirements and if the property is suitable for mortgage insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–New (26–1852)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Description of Materials, VA Form 26–1852.

OMB Control Number: 2900–New (26–1852).

Type of Review: In use without an OMB number.

Abstract: VA Form 26–1852 is used to document material used in the construction of a dwelling or specially adapted housing project. VA appraiser will use the information collected to establish the value and/or cost of adaptations for the property before it is constructed.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,100 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,200.

Dated: April 18, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–9699 Filed 4–20–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 60 and 62

Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008 and Standards of Performance for New Stationary Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[EPA–HQ–OAR–2011–0405 and EPA–HQ–OAR–2006–0534; FRL–9660–1]

RIN 2060–AR11

Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008 and Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 6, 2009, the EPA adopted amendments to the September 15, 1997, new source performance standards and emissions guidelines for hospital/medical/infectious waste incinerators. The amendments were developed in response to the March 2, 1999, remand of the 1997 hospital/medical/infectious waste incinerators regulations by the U.S. Court of Appeals for the District of Columbia Circuit (the Court), which requested further explanation of the EPA's reasoning in determining the minimum regulatory emission standards for new and existing hospital/medical/infectious waste incinerators. Today's action proposes amendments to the hospital/medical/infectious waste incinerators federal plan to implement the amended emission guidelines adopted on October 6, 2009, for those states that do not have an approved revised/new state plan implementing the emission guidelines, as amended, in place by October 6, 2011. Today's action also proposes to amend the new source performance standards to better reflect our original intent in the October 6, 2009, final rule in eliminating an exemption during startup, shutdown and malfunction periods from the requirement to comply with standards at all times.

DATES: *Comments.* Comments must be received on or before June 7, 2012. Because of the need to revise the hospital/medical/infectious waste incinerators (HMIWI) federal plan in a timely manner, the EPA does not expect to grant requests for extensions beyond this date.

Public Hearing. If anyone contacts the EPA by May 3, 2012 requesting to speak at a public hearing, the EPA will hold a public hearing on May 8, 2012.

ADDRESSES: Submit your comments on the federal plan requirements proposed rule, identified by Docket ID No. EPA–HQ–OAR–2011–0405, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email:* Send your comments via electronic mail to *a-and-r-Docketa@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2011–0405.
- *Facsimile:* Fax your comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2011–0405.
- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2011–0405. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2011–0405. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Submit your comments on the new source performance standards (NSPS) final rule amendments, identified by Docket ID No. EPA–HQ–OAR–2006–0534, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email:* Send your comments via electronic mail to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2006–0534.
- *Facsimile:* Fax your comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2006–0534.
- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0534. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2006–0534. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments on the federal plan requirements proposed rule to Docket ID No. EPA–HQ–OAR–2011–0405. Direct your comments on the NSPS final rule amendments to Docket ID No. EPA–HQ–OAR–2006–0534. The EPA's policy is that all comments received will be included in the public docket 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Public Hearing: If a public hearing is held, it will be held at the EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Contact Ms. Joan Rogers at (919) 541–4487, to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held or to determine the hearing location. If no one contacts the EPA requesting to speak at a public hearing concerning this proposed rule by May 3, 2012, the hearing will be cancelled without further notice.

Docket: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0405 and Legacy Docket ID No. A–98–24. The EPA has established a docket for the HMIWI rules under Docket ID No. EPA–HQ–OAR–2006–0534 and Legacy

Docket ID No. A–91–61. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Fuels and Incineration Group, Sector Policies and Programs Division (E143–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0964; fax number: (919) 541–3470; email address: *hambrick.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document

The following outline is provided to aid in locating information in this preamble.

I. General Information
A. Does the proposed action apply to me?
B. What should I consider as I prepare my comments?
II. Background Information
A. What is the regulatory development background for this proposed rule?
B. What is the purpose of this proposed rule?
C. What is the status of state plan submittals?
III. Affected Facilities
A. What is a HMIWI?
B. Does the federal plan apply to me?
C. How do I determine if my HMIWI is covered by an approved and effective state plan?
IV. Elements of the HMIWI Federal Plan
A. Legal Authority and Enforcement Mechanism
B. Inventory of Affected HMIWI
C. Inventory of Emissions
D. Emissions Limits
E. Compliance Schedules
F. Waste Management Plan Requirements
G. Testing, Monitoring, Recordkeeping and Reporting Requirements
H. Operator Training and Qualification Requirements
I. Record of Public Hearings
J. Progress Reports
V. Summary of Proposed Amendments to HMIWI Federal Plan
A. What are the proposed amendments to applicability?
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F. What are the proposed amendments to the recordkeeping and reporting requirements?
G. What are the proposed amendments to the compliance schedule?
H. What are the other proposed amendments?
VI. Summary of Proposed Amendments to HMIWI New Source Performance Standards
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VIII. Implementation of the Federal Plan and Delegation
A. Background of Authority
B. Delegation of the Federal Plan and Retained Authorities
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IX. Title V Operating Permits
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X. Statutory and Executive Order Reviews
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B. Paperwork Reduction Act (PRA)
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D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice (EJ) in Minority Populations and Low-Income Populations

A redline version of the federal plan regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Does the proposed action apply to me?

Regulated Entities. If you own or operate an existing HMIWI and are not already subject to an EPA-approved and effective state plan implementing the October 6, 2009, revised emission guidelines (EG), you may be covered by this proposed action. Existing HMIWI are those that commenced construction on or before December 1, 2008, or commenced modification on or before April 6, 2010. Regulated categories and entities include those listed in the following table.

Category	NAICS * code	Examples of regulated entities
Industry	622110, 622310, 325411, 325412, 562213, 611310.	Private hospitals, other health care facilities, commercial research laboratories, commercial waste disposal companies, private universities.
Federal Government	622110, 541710, 928110	Federal hospitals, other health care facilities, public health service, armed services.
State/local/tribal Government	622110, 562213, 611310	State/local hospitals, other health care facilities, state/local waste disposal services, state universities.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action. To determine whether your facility would be affected by the proposed action, you should examine the applicability criteria in § 62.14400 of subpart HHH. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or email. Send or deliver information identified

as CBI to only the following address: Ms. Amy Hambrick, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2011–0405. Clearly mark the part or all of the information that you claim to be CBI. For CBI on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified in the preceding section titled **DATES**.

3. Docket

The docket number for the proposed action regarding the HMIWI federal plan (40 CFR part 62, subpart HHH) is Docket ID No. EPA–HQ–OAR–2011–0405.

The docket number for the proposed action regarding the NSPS (40 CFR part 60, subpart Ec) is Docket ID No. EPA–HQ–2006–0534.

4. Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of the proposed action and final rule amendments is available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, the EPA posted a copy of the proposed action and final rule amendments on the TTN's policy and guidance page for newly proposed or promulgated rules at *www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

A. What is the regulatory development background for this proposed rule?

Section 129 of the Clean Air Act (CAA) requires the EPA to develop NSPS and EG for ''units combusting hospital waste, medical waste and infectious waste.'' On September 15, 1997, the EPA promulgated NSPS for new HMIWI, codified at 40 CFR part 60 subpart Ec, and EG for existing HMIWI, codified at 40 CFR part 60 subpart Ce. (See 62 FR 48348.) The NSPS and EG were designed to reduce air pollution emitted from these HMIWI, including cadmium (Cd), carbon monoxide (CO), dioxins/furans (total, or 2,3,7,8-Tetrachlorodibenzo-p-Dioxin toxic equivalent (TEQ)), hydrogen chloride (HCl), lead (Pb), mercury (Hg), nitrogen oxides (NO_X), opacity, particulate matter (PM) and sulfur dioxide (SO_2). The 1997 NSPS applied to HMIWI for which construction began after June 20, 1996, and required compliance within 6 months after startup or by March 16, 1998, whichever date was later. The 1997 EG applied to HMIWI for which construction began on or before June 20, 1996, and required compliance no later than September 15, 2002.

On March 2, 1999, in *Sierra Club* v. *EPA*, 167 F.3d 658 (DC Cir. 1999), the U.S. Court of Appeals for the DC Circuit remanded the rule to the EPA for further explanation regarding how the EPA derived the maximum achievable control technology (MACT) emissions standards for HMIWI. The Court did not vacate the regulations and the regulations remained in effect during the remand.

On July 6, 1999, the EPA proposed the federal plan requirements for HMIWI units constructed on or before June 20, 1996 (64 FR 36426). The federal plan covered existing HMIWI located in states that did not have an approved state plan. Furthermore, the federal plan would implement and enforce the EG in Indian country until tribes receive approval to administer their own programs. On August 15, 2000, the EPA promulgated the federal plan requirements for HMIWI units constructed on or before June 20, 1996 (65 FR 49868). The 1997 HMIWI rules were fully implemented by September 2002.

On February 6, 2007, the EPA proposed a response to the HMIWI remand. (See 72 FR 5510.) The proposed response would have revised some of the emissions limits in the NSPS and EG. In addition to responding to the Court's remand, the EPA also proposed its first 5-year review of the HMIWI standards. Every 5 years after adopting a MACT standard under section 129, CAA section 129(a)(5) requires the EPA to review and, if appropriate, revise the incinerator standards.

On December 1, 2008, the EPA reproposed its response to the Court's remand and 5-year review (73 FR 72962). The EPA's decision to repropose its response to the remand was based on a number of factors, including further rulings by the Court that were issued after the 2007 proposal was published. In addition, public comments regarding the 2007 proposal raised issues that, upon further consideration, the EPA believed would best be addressed through a reproposal. In response to public comments on the 2008 reproposal, the EPA further revised the standards and, on October 6, 2009, published final revisions to the September 1997 NSPS and EG to respond to the remand and satisfy the 5-year review requirement under CAA section 129(a)(5) (74 FR 51367). On April 4, 2011, the EPA promulgated amendments to the NSPS and EG, correcting inadvertent drafting errors in the NO_X and SO_2 emissions limits for large HMIWI in the NSPS, which did not correspond to our description of our standard-setting process, correcting erroneous cross-references in the reporting and recordkeeping requirements in the NSPS, clarifying that compliance with the EG must be expeditious if a compliance extension is granted, correcting the inadvertent omission of delegation of authority provisions in the EG, correcting errors in the units' description for several emissions limits in the EG and NSPS and removing extraneous text from the HCl emissions limit for large HMIWI in the EG (76 FR 18407).

B. What is the purpose of this proposed rule?

Section 129 of the CAA relies upon states as the preferred implementers of

EG for existing HMIWI. To make the HMIWI EG enforceable, states with existing HMIWI are to submit to the EPA within 1 year following promulgation of the EG state plans that implement and enforce the amended EG. For states that do not have an EPA-approved and effective plan, the EPA must develop and implement a federal plan within 2 years following promulgation of the EG. The federal plan is an interim measure to ensure that emissions standards are implemented until states assume their role as the preferred implementers of the EG. States without any existing HMIWI are directed to submit to the Administrator a letter of negative declaration certifying that there are no HMIWI in the state. No plan is required for states that do not have any HMIWI. Hospital/medical/infectious waste incinerators located in states that mistakenly submit a letter of negative declaration would be subject to the federal plan until a state plan becomes approved and effective covering those HMIWI.

State plans to implement the EG adopted on September 15, 1997, are already in place and the EPA adopted a HMIWI federal plan on August 15, 2000, (65 FR 49868) to implement the September 15, 1997, EG for those HMIWI not covered by an approved state plan. Revised or new state plans to implement the amended EG adopted on October 6, 2009, are currently undergoing EPA review. The deadline for submitting revised/new state plans for EPA review was October 6, 2010.

Today's action proposes amendments to the HMIWI federal plan to implement the amended EG adopted on October 6, 2009, for those states that did not have an approved revised/new state plan in place by October 6, 2011. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require the EPA to develop, implement and enforce a federal plan to cover existing HMIWI located in states that do not have an approved plan within 2 years after promulgation of the EG (by October 6, 2011). The EPA is proposing amendments to the HMIWI federal plan now so that a promulgated federal plan will go into place for any such states, thus ensuring implementation and enforcement of the amended HMIWI EG.

The amended EG adopted on October 6, 2009, required improvements in performance for 50 of the then operating 57 units.[1] Incineration of hospital/medical/infectious waste causes the release of a wide array of air pollutants, some of which exist in the waste feed material and are released unchanged during combustion, and some of which are generated as a result of the combustion process itself. EPA estimated that a total emissions reduction of 393,000 pounds per year of the regulated pollutants, of which acid gases (*i.e.*, hydrogen chloride and sulfur dioxide) comprise about 62 percent, particulate matter about 0.8 percent, carbon monoxide about 0.3 percent, nitrogen oxides about 37 percent, and metals (i.e., lead, cadmium, and mercury) and dioxins/furans about 0.2 percent. EPA also estimated that air pollution control devices that would be installed to comply with the 2009 rule would also effectively reduce emissions of pollutants such as polycyclic organic matter (POM) and polychlorinated biphenyls (PCBs). The 2009 final rule's revised waste management plan provisions encourage segregation of types of waste that lead to such emissions, such as chlorinated plastics and PCB-containing wastes.

C. What is the status of state plan submittals?

Sections 111(d) and 129(b)(3) of the CAA, as amended, 42 U.S.C. 7411(d) and 7429(b)(3), authorize the EPA to develop and implement a federal plan for HMIWI located in states with no approved and effective state plan. The status of the state plans are outlined in the below table.

STATUS OF STATE PLANS

Status	States
I. States with EPA–Approved State Plans	Florida.
II. Anticipated States to Submit Negative Declarations to the EPA	New York; Puerto Rico; Pennsylvania; Mississippi; New Mexico-City of Albuquerque; Oklahoma; South Dakota; District of Columbia.
III. Negative Declaration Submitted/EPA Approved	Maine; Massachusetts; Vermont; Delaware; Virginia; Jefferson County (Birmingham), Alabama; Kentucky; Jefferson County (Louisville), Kentucky; Forsyth County (Winston-Salem), North Carolina; Buncombe County (Asheville), North Carolina; South Carolina; Philadelphia County; New Hampshire; Rhode Island.
IV. Final State Plans Submitted to the EPA	North Dakota.
V. Draft States Plans Submitted to the EPA	Maryland; West Virginia.
VI. States for which the EPA has not received a draft or final plan or negative declaration.	Pennsylvania; Alabama; Huntsville, Alabama; North Carolina; Mecklenburg County (Charlotte), North Carolina; Georgia; Tennessee; Illinois; Indiana; Arkansas; Louisiana; Texas; Iowa; Kansas; Missouri; Nebraska; Colorado; Montana; Arizona; Maricopa County, Arizona; Pima County, Arizona; Pinal County, Arizona; California; Hawaii; Nevada; American Samoa; Guam; Alaska; Idaho; Oregon; Washington.
VII. Anticipated States to Accept Delegation of Federal Plan	Connecticut; New Jersey; Virgin Islands; Allegheny County, Pennsylvania; Michigan; Minnesota; Ohio; Wisconsin.

The preamble of the final federal plan will list states that have an EPA-approved plan in effect on the date the final federal plan is signed by the EPA Administrator. As Regional Offices approve state plans, they will also, in the same action, amend the appropriate subpart of 40 CFR part 62 to codify their approvals.

The EPA will maintain a list of revised/new state plan submittals and approvals on the TTN Air Toxics Web site at *http://www.epa.gov/ttn/atw/129/hmiwi/rihmiwi.html.* The list will help HMIWI owners or operators determine whether their HMIWI is affected by a state plan or the federal plan.

Hospital/medical/infectious waste incinerator owners and operators can also contact the EPA Regional Office for the state in which their HMIWI is

[1] See 74 FR 51371–51375, 51396–51399, and 51399–51400 to reference the regulatory background, summary of final rule changes, and impacts of the amended EG adopted on October 6, 2009.

located to determine whether there is an approved and effective revised/new state plan in place. The following table lists the names, email addresses and telephone numbers of the EPA Regional Office contacts and the states and protectorates that they cover.

REGIONAL OFFICE CONTACTS

Region	Regional contact	Phone	States and protectorates
Region I	Ian Cohen, *cohen.ian@epa.gov*	(617) 918–1655	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont.
Region II	Ted Gardella, *gardella.anthony@epa.gov*	(212) 637–3892	New York, New Jersey, Puerto Rico, Virgin Islands.
Region III	Mike Gordon, *gordon.mike@epa.gov*	(215) 814–2039	Virginia, Delaware, District of Columbia, Maryland, Pennsylvania, West Virginia.
Region IV	Donnette Sturdivant, *sturdivant.donnette@epa.gov* Daniel Garver, *garver.daniel@epa.gov*	Sturdivant: (404) 562–9431 Garver: (404) 562–9839	Florida, Georgia, North Carolina, Alabama, Kentucky, Mississippi, South Carolina, Tennessee.
Region V	Margaret Sieffert, *sieffert.margaret@epa.gov*	(312) 353–1151	Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio.
Region VI	Steve Thompson, *thompson.steve@epa.gov*	(214) 665–2769	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Region VII	Lisa Hanlon, *hanlon.lisa@epa.gov*	(913) 551–7599	Iowa, Kansas, Missouri, Nebraska.
Region VIII	Christopher Razzazian, *razzazian.christopher@epa.gov*	(303) 312–6648	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
Region IX	Joseph Lapka, *lapka.joseph@epa.gov*	(415) 947–4226	Arizona, California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands.
Region X	Heather Valdez, *valdez.heather@epa.gov*	(206) 553–6220	Alaska, Idaho, Oregon, Washington.

III. Affected Facilities

A. What is a HMIWI?

The term ''HMIWI'' means any device that combusts any amount of hospital waste and/or medical/infectious waste, as defined in 40 CFR part 62, subpart HHH. Six types of combustion units, which are listed in § 62.14400 of subpart HHH, are conditionally exempt from specific provisions of the currently promulgated 2000 federal plan and would continue to be so under today's proposed amended federal plan.

B. Does the federal plan apply to me?

The amended federal plan would apply to you if you are the owner or operator of a combustion device that combusts hospital waste and/or medical/infectious waste (as defined in subpart HHH) and the device is not covered by an approved and effective state plan as of October 6, 2011. The federal plan would cover your HMIWI until the EPA approves a state plan that covers your HMIWI and that plan becomes effective.

If you began the construction of your HMIWI on or before December 1, 2008, or began modification of your HMIWI on or before April 6, 2010, it would be considered an existing HMIWI and could be subject to the federal plan. If you began the construction of your HMIWI after December 1, 2008, or began modification of your HMIWI after April 6, 2010, it would be considered a new HMIWI and would be subject to the NSPS.

Your existing HMIWI would be subject to this federal plan, if on the effective date of the amended federal plan, the EPA has not approved the revised/new state plan implementing the amended EG that covers your unit or the EPA-approved state plan has not become effective. The specific applicability of the currently promulgated federal plan is described in 40 CFR 62.14400 through 62.14403 of subpart HHH, and would continue to apply, as amended, under the proposed revised federal plan. The amended federal plan would become effective 30 days after final promulgation of these amendments.

Once an approved revised/new state plan is in effect, the amended federal plan would no longer apply to HMIWI covered by such plan. An approved state plan is a plan developed by a state that the EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B, to implement and enforce 40 CFR part 60, subpart Ce. The state plan is effective on the date specified in the notice published in the **Federal Register** announcing the EPA's approval of the plan.

The EPA's promulgation of an amended HMIWI federal plan will not preclude states from submitting a plan. If a state submits a plan after the promulgation of amendments to the HMIWI federal plan, the EPA will review and approve or disapprove the state plan. If the EPA approves a plan, then the amended HMIWI federal plan would no longer apply to HMIWI covered by the state plan as of the effective date of the state plan. If a HMIWI were overlooked by a state and the state submitted a negative declaration letter, or if an individual HMIWI were not covered by an approved and effective state plan, the HMIWI would be subject to this amended federal plan.

C. How do I determine if my HMIWI is covered by an approved and effective state plan?

Part 62 of Title 40 of the CFR identifies the status of approval and promulgation of section 111(d) and section 129 state plans for designated facilities in each state. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your state has an approved and effective plan, you should contact your state environmental agency's air director or your EPA Regional Office (see table in section II.C of this preamble) to determine if approval occurred since publication of the most recent version of part 62.

IV. Elements of the Current HMIWI Federal Plan

The EPA is not proposing amendments to several elements of the existing federal plan. For other elements, we are proposing amendments, to reflect the amended EG. The basic elements of the federal plan include: (1) Identification of legal authority and mechanisms for implementation; (2) inventory of HMIWI; (3) emissions inventory; (4)

emissions limits; (5) compliance schedules; (6) public hearing; (7) testing, monitoring, recordkeeping and reporting; (8) waste management plan; (9) operator training and qualification; and (10) progress reporting. See 40 CFR part 62 subparts HHH and sections 111 and 129 of the CAA. For each element discussed below, we explain to what extent we are proposing to amend the current federal plan requirements.

A. Legal Authority and Enforcement Mechanism

Section 301(a) of the CAA provides the EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct the EPA to develop a federal plan for states that do not submit approvable state plans. Sections 111 and 129 of the CAA provide the EPA with the authority to implement and enforce the federal plan in cases where the state fails to submit a satisfactory state plan. Section 129(b)(3) of the CAA requires the EPA to develop, implement and enforce a federal plan within 2 years after the date the relevant EG are promulgated (by October 6, 2011, for the 2009 HMIWI EG). Compliance with the EG cannot be later than 5 years after the relevant EG are promulgated (by October 6, 2014, for the 2009 HMIWI EG). Today's action is not proposing any changes to this element.

B. Inventory of Affected HMIWI

The federal plan, as currently promulgated, includes an inventory of HMIWI affected by the EG. (See 40 CFR 62.14402.) Today's proposed amendments to the federal plan will also include in Docket No. EPA–HQ–OAR–2011–0405 an inventory of the HMIWI that may potentially be covered by these amendments in the absence of approved state plans. This revised inventory contains 53 HMIWI in 21 states. It is based on information collected from EPA Regions, states, HMIWI facilities; and review of existing HMIWI inventories, Title V permits, emissions test reports and facility Web sites. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this proposed amended federal plan may include, but are not limited to, the HMIWI listed in Docket No. EPA–HQ–OAR–2011–0405. Any HMIWI that meets the applicability criteria in the proposed amended federal plan rule would be subject to the amended federal plan, regardless of whether it is listed in the inventory. States or individuals are invited to identify additional sources for inclusion to the list during the comment period for this proposal.

C. Inventory of Emissions

The federal plan, as currently promulgated, includes an emissions estimate for HMIWI subject to the EG. The pollutants inventoried are Cd, CO, dioxins/furans, HCl, Pb, Hg, PM, NO_X and SO_2. For this proposal, the EPA has estimated the emissions from each known HMIWI that potentially may be covered by the proposed amended federal plan for the nine pollutants regulated by the EG and covered by the proposed revised federal plan.

The emissions inventory is based on available information about the HMIWI, emissions factors and typical emissions rates developed for calculating nationwide air impacts of the amended EG and the amended federal plan. Refer to the inventory memorandum in Docket No. EPA–HQ–OAR–2011–0405 for the complete updated emissions inventory and details on the emissions calculations associated with today's proposal.

D. Emissions Limits

As the current federal plan contains emissions limits that correspond to the 1997 HMIWI rule, today's proposed amended federal plan includes emissions limits that correspond to those in the 2009 EG. (See 40 CFR 62.14410–62.14413.) Section 129(b)(2) of the CAA requires these emissions limits to be ''at least as protective as'' those in the EG. The emissions limits in these proposed amendments to the HMIWI federal plan are the same as those contained in the 2009 amended EG but also include the PM emissions limits for medium HMIWI and HCl emissions limits for small HMIWI that were previously subject to the 1997 NSPS but are now subject to the amended EG. These two emissions limits are more stringent than the corresponding EG emissions limits. We include these limits because HMIWI units that were regulated as new sources under the 1997 NSPS would be treated as existing sources under the 2009 EG, but would need to continue to comply with the 1997 NSPS limits where those are more stringent than the 2009 EG limits. (See proposed revised Table 1 to subpart HHH.) Section V.B of this preamble discusses the amended emissions limits.

E. Compliance Schedules

Increments of progress are required for HMIWI that need more than 1 year from state plan approval to comply, or in the case of the federal plan, more than 1 year after promulgation of the final amended federal plan. (See 40 CFR 62.14470–62.14472.) Increments of progress are included to ensure that each HMIWI needing more time to comply is making progress toward meeting the emissions limits.

For HMIWI that need more than 1 year to comply, the proposed amended federal plan includes in its compliance schedule the same five increments of progress from 40 CFR 62.14470(b)(2). The proposed amended federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are: (1) Submit final control plan; (2) award contracts for control systems or process modifications or orders for purchase of components; (3) begin on-site construction or installation of the air pollution control device(s) or process changes; (4) complete on-site construction or installation of the air pollution control device(s) or process changes; and (5) final compliance.

F. Waste Management Plan Requirements

The current federal plan includes a waste management plan which is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. (See 40 CFR 62.14430–62.14432.) Today's proposed amendments to the federal plan include this element and require that the waste management plan must be submitted no later than the date 60 days after the initial compliance demonstration. This date is 240 days after the final compliance date.

G. Testing, Monitoring, Recordkeeping and Reporting Requirements

The current federal plan includes testing, monitoring, recordkeeping and reporting requirements. (See 40 CFR 62.14440–62.14465.) Today's proposed amendments update these requirements to correspond with the 2009 EG. Testing, monitoring, recordkeeping and reporting requirements are consistent with 40 CFR part 62 subpart HHH and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The current federal plan requires that the owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. (See 40 CFR 62.14420–62.14425.) Today's proposed amended federal plan also contains operator training and

qualification requirements that correspond to the 2009 EG; no changes are proposed to this element.

I. Record of Public Hearings

As the current federal plan provided the opportunity for public hearings, today's proposed amended federal plan provides opportunity for public participation in adopting the plan. If requested to do so, the EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket No. EPA–HQ–OAR–2011–0405. If a public hearing is requested and held, the EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

As under the current federal plan, today's amendments request that the EPA Regional Offices prepare annual progress reports to show the progress of HMIWI toward implementation of the EG. States that have been delegated the authority to implement and enforce this federal plan would be required to submit annual progress reports to the appropriate EPA Regional Office.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification of sources that have shutdown or started operation; (4) emissions inventory data for sources that were not in operation at the time of plan development but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emissions information; and (6) copies of technical reports on any performance testing and monitoring.

V. Summary of Today's Proposed Amendments to HMIWI Federal Plan

Each amended plan element is described below as it relates to the elements outlined above in the current HMIWI federal plan. The table below lists each amended element and identifies where it is located or codified.

Element of the HMIWI federal plan	Location
Legal authority and enforcement mechanism	Sections 129(b)(3), 111(d), 301(a), and 301(d)(4) of the CAA.
Inventory of affected HMIWI units	Docket EPA–HQ–OAR–2011–0405.
Inventory of emissions	Docket EPA–HQ–OAR–2011–0405.
Emissions limits	40 CFR 62.14410–62.14413.
Compliance schedules	40 CFR 62.14470–62.14472.
Operator training and qualification	40 CFR 62.14420–62.14425.
Waste management plan	40 CFR 62.14430–62.14432.
Record of public hearings	Docket EPA–HQ–OAR–2011–0405.
Testing, monitoring, recordkeeping and reporting	40 CFR 62.14440–62.14465.
Progress reports	Section IV.J of this preamble.

A. What are the proposed amendments to applicability?

Hospital/medical/infectious waste incinerators were treated differently under the 2009 amended EG than they were under the 1997 EG in terms of whether they are ''existing'' or ''new'' sources. The 2009 amended EG included new dates defining what are ''existing'' and ''new'' sources for purposes of the revised NSPS and EG. All HMIWI that complied with the 1997 EG (*i.e.,* those units for which construction commenced on or before June 20, 1996, or for which modification commenced on or before March 16, 1998) were still considered ''existing'' sources under the 2009 amended EG and are required to meet the emissions limits under the amended EG by the applicable compliance date for the amended EG. All HMIWI that complied with the 1997 NSPS (*i.e.,* those units for which construction commenced after June 20, 1996, but no later than December 1, 2008, or for which modification commenced after March 16, 1998, but no later than April 6, 2010) were also considered ''existing'' sources under the amended EG. Those HMIWI are required to meet the emissions limits under the amended EG by the applicable compliance date for the amended EG, except where the corresponding 1997 NSPS is more stringent, in which case the HMIWI are to continue to comply with that 1997 NSPS. In the interim, those 1997 NSPS sources that must meet the amended EG must continue to be subject to the NSPS as promulgated in 1997 until the date for compliance with the revised EG. Those units for which construction commenced after the December 1, 2008, HMIWI proposal, or for which modification commenced on or after April 6, 2010, are considered ''new'' units subject to more stringent revised NSPS emissions limits.

Today's action proposes to incorporate these changes to the applicability into the HMIWI federal plan. No other amendments are being proposed for the other applicability provisions in the federal plan (*i.e.,* exemptions for incinerators burning pathological, low-level radioactive, and/or chemotherapeutic waste; co-fired combustors; combustors with permits under section 3005 of the Solid Waste Disposal Act; certain municipal waste combustors; pyrolysis units; and cement kilns firing hospital waste and/or medical/infectious waste).

B. What are the proposed amendments to the emissions limits?

As noted in section II.A of this preamble, on October 6, 2009, the EPA published final amendments to the September 15, 1997, NSPS and EG in response to a Court remand of the 1997 regulations and to satisfy the 5-year review requirement under CAA section 129(a)(5).

The EPA's response to the remand and 5-year review resulted in a revision to all of the emissions limits in the EG. Today's action proposes to incorporate the amended EG emissions limits into the existing HMIWI federal plan. Table 1 of this preamble summarizes the amended EG emissions limits promulgated to respond to the remand and fulfill the EPA's 5-year review obligation.

TABLE 1—SUMMARY OF EG EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR EXISTING HMIWI

Pollutant (units)	Unit size[1]	Final limit[2]
HCl (ppmv)	L	6.6
	M	7.7
	S	44
	SR	810
CO (ppmv)	L	11

TABLE 1—SUMMARY OF EG EMISSIONS LIMITS PROMULGATED IN RESPONSE TO THE REMAND FOR EXISTING HMIWI—Continued

Pollutant (units)	Unit size[1]	Final limit[2]
	M	5.5
	S,SR	20
Pb (mg/dscm)	L	0.036
	M	0.018
	S	0.31
	SR	0.50
Cd (mg/dscm)	L	0.0092
	M	0.013
	S	0.017
	SR	0.11
Hg (mg/dscm)	L	0.018
	M	0.025
	S	0.014
	SR	0.0051
PM (gr/dscf)	L	0.011
	M	0.020
	S	0.029
	SR	0.038
Dioxins/furans, total (ng/dscm).	L	9.3
	M	0.85
	S	16
	SR	240
Dioxins/furans, TEQ (ng/dscm).	L	0.054
	M	0.020
	S	0.013
	SR	5.1
NO_X (ppmv)	L	140
	M, S	190
	SR	130
SO_2 (ppmv)	L	9.0
	M, S	4.2
	SR	55
Opacity (%)	L, M, S, SR	6.0

[1] L = Large (>500 lb/hr of waste); M = Medium (>200 to ≤500 lb/hr of waste); S = Small (≤200 lb/hr of waste); SR = Small rural (small HMIWI >50 miles from boundary of nearest SMSA, burning <2,000 lb/wk of waste).

[2] All emissions limits are reported as corrected to 7 percent oxygen.

The 2009 amended EG removed provisions from the 1997 standards at 40 CFR 60.56c and 60.37e that exempted HMIWI from the standards during periods of startup, shutdown and malfunction (SSM) provided that no hospital waste or medical/infectious waste was being changed to the unit during those SSM periods. The 2009 EG requires that the emissions limits as listed above in Table 1, regardless of a SSM event, be met at all times. However, in one provision of the NSPS, section 60.56c(d)(2), the EPA inadvertently failed to delete a SSM exemption we had intended to eliminate, and to better reflect the EPA's intent in the 2009 final rule, today's action also amends that section of the NSPS to remove the accidentally retained SSM exemption. Please see section VI. of this preamble, which further discusses the amendment of the NSPS. Today's action also proposes to remove the SSM exemption from the 2000 federal plan at 40 CFR 62.14413, and proposes that the emissions limits apply at all times, for the same reasons.

As noted in the previous section, the 2009 amended EG specified that those HMIWI that previously complied with the 1997 NSPS would have to meet the emissions limits under the 2009 amended EG or the 1997 NSPS, whichever was more stringent. In two cases, the HCl emissions limit for small HMIWI and the PM emissions limit for medium HMIWI, the 1997 NSPS limits are more stringent than the 2009 amended EG limits, so those HMIWI that previously complied with the 1997 NSPS would continue to comply with the more stringent 1997 NSPS limits. Specifically, they would have to meet the 1997 NSPS HCl emissions limit of 15 parts per million by volume (ppmv) (at 7 percent oxygen) for small HMIWI and the 1997 NSPS PM limit of 0.015 grains per dry standard cubic foot (gr/dscf) (at 7 percent oxygen) for medium HMIWI, in addition to the 2009 EG emissions limits for the other pollutants. Today's action proposes to include these two 1997 NSPS emissions limits along with the 2009 amended EG emissions limits in the HMIWI federal plan.

Under the 1997 NSPS, new large HMIWI were required to demonstrate compliance with the 5 percent visible emissions limit for fugitive emissions generated during ash handling, by conducting annual performance tests using EPA Method 22. As discussed in section V.E.1 below, the 2009 amendments to the EG expanded this requirement to include all HMIWI, but only as an initial test requirement. As a result, under the amended EG, all HMIWI were made subject to the same 5 percent visible emissions limit. Today's action proposes to include this visible emissions limit for existing HMIWI in the HMIWI federal plan.

To provide greater clarity, the 2009 amendments to the EG also included averaging times and EPA reference test methods in the emissions limit tables for existing sources. It should be noted that the averaging times and EPA reference test methods added to the emissions limits tables were not new requirements but simply a restating of requirements presented elsewhere in the HMIWI regulations. Today's action proposes to add these additional columns to the emissions limits table in the HMIWI federal plan.

C. What are the proposed amendments to the waste management plan requirements?

Under the HMIWI EG promulgated on September 15, 1997, and HMIWI federal plan promulgated on August 15, 2000, existing HMIWI were required to submit a written plan that identified both the feasibility and methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

Commenters on the December 1, 2008, reproposal of the HMIWI EG amendments recommended that the EPA minimize or eliminate from the HMIWI waste stream any plastic wastes, Hg and other hazardous wastes (*e.g.,* Hg-containing dental waste, Hg-containing devices), pharmaceuticals and confidential documents and other paper products that could be shredded and recycled. One commenter recommended that the EPA take action to regulate emissions of polychlorinated biphenyls and polycyclic organic matter from HMIWI. Some commenters recommended that the EPA require commercial HMIWI to provide training and education to their customers regarding waste segregation and make incinerator operators responsible for the waste in their possession.

To address the various commenters' concerns, the waste management plan provisions in the HMIWI regulations were revised to promote the segregation of the aforementioned wastes and specify that commercial facilities train and educate their clients to conduct their own waste segregation. Today's action proposes to incorporate these revisions into the HMIWI federal plan.

D. What are the proposed amendments to the inspection requirements?

Under the 1997 EG and 2000 federal plan, existing small rural HMIWI were required to conduct annual equipment inspections to compensate for the lack of annual emissions testing at those sources. The inspections included the incinerator, air pollution control device (if any) and monitoring equipment. For the 2009 amendments to the EG, the EPA expanded annual air pollution control device inspections to the other HMIWI to allow those sources to demonstrate that their air pollution control devices are operating sufficiently well to allow compliance with the tighter emissions limits under the amended EG. Today's action proposes to incorporate this additional requirement into the HMIWI federal plan.

E. What are the proposed amendments to the performance testing and monitoring requirements?

The following paragraphs list a number of additional testing and monitoring requirements in the 2009 amendments to the EG that are proposed to be incorporated into the HMIWI federal plan in today's action.

1. Performance Testing

The 1997 EG and 2000 federal plan required existing large, medium and small non-rural HMIWI to conduct initial performance tests for Cd, CO, dioxins/furans, HCl, Pb, Hg, opacity and PM and annual performance tests for CO, HCl, opacity and PM. (An owner or operator could conduct less frequent testing if the facility demonstrated that it was in compliance with the emissions limits for 3 consecutive performance tests.) The 2009 amendments to the EG added the requirement that all HMIWI conduct initial performance tests for NO_X and SO_2 to demonstrate initial compliance with the revised emissions limits for those pollutants.

Under the 1997 EG and 2000 federal plan, small rural HMIWI were only required to conduct initial performance tests for CO, dioxins/furans, Hg, opacity and PM, and annual performance tests for opacity. Under the 2009 amendments to the EG, small rural HMIWI were required to also conduct initial performance tests for the other five regulated pollutants (Cd, HCl, Pb, NO_X and SO_2) and also conduct annual performance tests for CO, HCl and PM.

Under the 1997 NSPS, new large HMIWI were subject to a 5 percent visible emissions limit for fugitive emissions generated during ash handling. To demonstrate compliance with this emissions limit, new large HMIWI were required to conduct annual performance tests for fugitive emissions from ash handling using EPA Method 22. In the 2009 amendments to the EG, the EPA extended this minimal testing requirement to the other HMIWI, but only as an initial test requirement, to determine whether fugitive ash emissions are a concern from these sources. Existing HMIWI would be required to measure fugitive ash emissions during their next performance test.

In order to reduce the burden of complying with the additional testing requirements in the 2009 amendments to the EG, sources were allowed to use results of their previous emissions tests to demonstrate initial compliance with the revised emissions limits as long as the sources certify that the previous test results are representative of current operations. Only those sources who could not so certify and/or whose previous emissions tests do not demonstrate compliance with one or more revised emissions limits would be required to conduct another emissions test for those pollutants. (Note that most sources were already required under the 1997 EG to test for CO, HCl, opacity and PM on an annual basis and those annual tests are still required.)

To provide HMIWI with greater flexibility in demonstrating compliance, the 2009 amendments to the EG also incorporated by reference two alternatives to EPA reference test methods American Society of Mechanical Engineers (ASME) PTC 19.10–1981 and American Society for Testing and Materials (ASTM) D6784–02)), discussed further in section IX.I of this preamble.

2. Monitoring

Monitoring of operating parameters can be used to indicate whether air pollution control equipment and practices are functioning properly to minimize air pollution. The 1997 HMIWI EG and 2000 federal plan included the following parameter monitoring requirements for good combustion, wet scrubbers and dry scrubbers with fabric filters (FFs):

- If using a dry scrubber followed by a FF to comply with the emissions limits, continuously monitor charge rate, FF inlet temperature, flue gas temperature, secondary chamber temperature and sorbent flow rates for dioxin/furan, HCl and Hg sorbents.
- If using a wet scrubber to comply with the emissions limits, continuously monitor charge rate, flue gas temperature, secondary chamber temperature, pressure drop across the wet scrubber (or horsepower or amperage), scrubber liquor flow rate and scrubber liquor pH.
- If using a dry scrubber followed by a FF and wet scrubber, continuously monitor all of the aforementioned parameters.
- If using something other than the aforementioned air pollution control devices to comply with the emissions limits, petition the Administrator for other site-specific operating parameters to be established during the initial performance test and continuously monitored thereafter.

In the 2009 amendments to the EG, the EPA kept these parameter monitoring requirements and added a parameter requirement for those HMIWI expected to install selective noncatalytic reduction (SNCR) systems in order to comply with the more stringent NO_X limits in the 2009 EG. Those HMIWI installing SNCR technology to comply with the NO_X emissions limit were required to continuously monitor the charge rate, secondary chamber temperature and reagent (*e.g.,* ammonia or urea) flow rate.

Since the 1997 EG, bag leak detectors have been shown to be an effective method for demonstrating continuous compliance for sources equipped with FFs. Although the 2009 amendments to the EG did not require existing HMIWI equipped with FFs to install bag leak detectors, use of bag leak detectors was presented as an option for these HMIWI.

The most direct means of monitoring compliance with emissions limits is the use of continuous emissions monitoring systems (CEMS) to measure the emissions of a pollutant on a continuous basis. In addition to CEMS, sorbent trap biweekly monitoring systems for Hg and dioxins/furans are also available. Although the 2009 amendments to the EG did not require CO, HCl, PM, Hg or multi-metal CEMS or sorbent trap biweekly Hg and dioxin/furan monitoring systems for existing HMIWI, such systems were presented as alternative monitoring requirements in lieu of annual testing for all sources.

3. Electronic Data Submittal

The EPA must have performance test data to conduct effective 5-year reviews of CAA section 129 standards, as well as for many other purposes, including compliance determinations, development of emissions factors and determining annual emissions rates. In conducting 5-year reviews, the EPA has found it ineffective and time-consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

In the 2009 amendments to the EG, to improve data accessibility, we gave HMIWI the option of submitting to an EPA electronic database an electronic copy of annual stack test reports. Data entry would be through an electronic emissions test report structure used by the staff as part of the emissions testing project. The electronic reporting tool (ERT) was developed with input from stack testing companies who generally collect and compile performance test data electronically. The ERT is currently available and access to direct data

submittal to the EPA's electronic emissions database (WebFIRE).[2]

The option to submit source test data electronically to the EPA would not require any additional performance testing. In addition, when a facility elects to submit performance test data to WebFIRE, there would be no additional requirements for data compilation. Further discussion of the benefits of using electronic data submittal is provided in the preamble to the October 6, 2009, amendments. (See 74 FR 51373–4.)

The electronic database that would be used is the EPA's WebFIRE, which is a Web site accessible through the EPA's TTN. The WebFIRE Web site was constructed to store emissions test data for use in developing emissions factors. A description of the WebFIRE database can be found at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*. The ERT would be able to transmit the electronic report which would be submitted using the Compliance and Emissions Data Reporting Interface (CEDRI). The submitted report would be submitted through the EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html* and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*). The ERT can be used to document stack tests data for those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/index.html.* We believe that industry would benefit from this option of electronic data submittal. Having these data, EPA would be able to develop improved emission factors, make fewer information requests, and promulgate better regulations.

One major advantage of the option to submit performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies, and EPA significant time, money, and effort while also improving the quality of emission inventories and, as a result, air quality regulations.

F. What are the proposed amendments to recordkeeping and reporting requirements?

The following paragraphs list a number of additional recordkeeping and reporting requirements in the 2009 amendments to the EG, that would be incorporated into the HMIWI federal plan in today's proposed amendments.

1. Recordkeeping

The 1997 EG and 2000 federal plan required owners and operators to maintain for 5 years records of opacity and emissions measurements, operating parameters, equipment inspections and maintenance (small rural units only), deviations, initial performance tests and all subsequent performance tests, operator training and qualification and calibration of monitoring devices.

The 2009 amendments to the EG added the requirement that owners and operators maintain records of the amount and type of NO_X reagent used, records of the annual air pollution control device inspections (including any maintenance), and a description, included with each test report, of how operating parameters were established during the initial performance test and re-established during subsequent performance tests.

2. Reporting

Under the 1997 EG and 2000 federal plan, owners and operators were required to submit the results of the initial performance tests and all subsequent performance tests, values for the operating parameters, waste management plan, equipment inspections and maintenance (small rural units only) and annual compliance reports and semiannual reports of any deviations from the emissions limits.

The 2009 amendments to the EG added requirements for existing HMIWI to submit, along with each test report, a description of how operating parameters were established or re-established and submit records of annual air pollution control device inspections (including any maintenance).

G. What are the proposed amendments to the compliance schedule?

Similar to the approach of the 2000 HMIWI federal plan, as described in section IV.J. ''Progress Reports,'' today's proposed revised federal plan requires owners or operators of HMIWI to either: (1) Come into compliance with the plan within 1 year after the plan is promulgated; or (2) meet increments of progress and come into compliance by October 6, 2014. Increments of progress are necessary in order to ensure that HMIWI needing more time to comply are making progress toward meeting the emissions limits. The amended federal plan, as proposed, includes as its compliance schedule the same five increments of progress from 40 CFR 62.14470(b)(2), along with defined and enforceable dates for completion of each increment.

The HMIWI owner or operator is responsible for meeting each of the five increments of progress for each HMIWI no later than the applicable compliance date. The owner or operator must notify

[2] See *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main, http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

the EPA as each increment of progress is achieved, as well as when any is missed. The notification must identify the increment and the date the increment is achieved (or missed). If an owner or operator misses an increment deadline, the owner or operator must also notify the EPA when the increment is finally achieved. The owner or operator must mail the notification to the applicable EPA Regional Office within 10 business days after the increment date defined in the amended federal plan. (See the table under section II.C. of this document for a list of Regional Offices.)

The definition of each increment of progress, along with its required completion date, follows.

Submit Final Control Plan. To meet this increment, the owner or operator of each HMIWI must submit a plan that describes, at a minimum, the air pollution control device and/or process changes that will be employed so that each HMIWI complies with the emissions limits and other requirements. A final control plan is not required for units that will be shutdown. Completion date: October 6, 2012.

Award Contract. To award a contract means the HMIWI owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the owner or operator. The EPA anticipates that the owner or operator may award a number of contracts to complete the retrofit. To meet this increment of progress, the HMIWI owner or operator must award a contract or contracts to initiate on-site construction, to initiate on-site installation of air pollution control devices, and/or to incorporate process changes. The owner or operator must mail a copy of the signed contract(s) to the EPA within 10 business days of entering the contract(s). Completion date: May 6, 2013.

Begin On-site Construction. To begin on-site construction, installation of air pollution control devices or process change means to begin any of the following:

(1) Installation of an air pollution control device in order to comply with the final emissions limits as outlined in the final control plan;

(2) Physical preparation necessary for the installation of an air pollution control device in order to comply with the final emissions limits as outlined in the final control plan;

(3) Alteration of an existing air pollution control device in order to comply with the final emissions limits as outlined in the final control plan;

(4) Alteration of the waste combustion process to accommodate installation of an air pollution control device in order to comply with the final emissions limits as outlined in the final control plan; or

(5) Process changes identified in the final control plan in order to meet the emissions standards. Completion date: January 6, 2014.

Complete On-site Construction. To complete on-site construction means that all necessary air pollution control devices or process changes identified in the final control plan are in place, on-site and ready for operation on the HMIWI. Completion date: August 6, 2014.

Final Compliance. To be in final compliance means to incorporate all process changes or complete retrofit construction in accordance with the final control plan and to connect the air pollution control equipment or process changes such that, if the HMIWI is brought online, all necessary process changes or air pollution control equipment will operate as designed. Completion date: October 6, 2014.

If a HMIWI does not achieve final compliance by October 6, 2014, the amended federal plan, as proposed, requires the HMIWI to shutdown by October 6, 2014, complete the retrofit while not operating and be in compliance upon restarting. Shutdown is necessary in order to avoid being out of compliance and subject to possible enforcement action.

H. What are the other proposed amendments?

1. Definitions

For clarification, the 2009 amendments to the EG revised the definition of ''Minimum secondary chamber temperature'' to read ''Minimum secondary chamber temperature means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, and dioxin/furan emissions limits.''

To address the introduction of some new terms, the 2009 amendments to the EG added the following definitions:

- ''Bag leak detection system'' means ''an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures,'' and examples of such a system were provided.
- ''Commercial HMIWI'' means ''a HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.''
- ''Minimum reagent flow rate'' means ''90 percent of the highest 3-hour average reagent flow rate at the inlet to the selective noncatalytic reduction technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the NO_X emissions limit.''

Today's action proposes to amend the HMIWI federal plan to include these revised and new definitions from the amended EG. Today's action also proposes to include a revised definition for ''modification or modified HMIWI'' to address the change in applicability for modified HMIWI under the amended federal plan.

2. Toxicity Equivalence Factors

In a January 6, 2011, **Federal Register** notice, the EPA announced the availability of the final ''Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds'' (EPA/100/R–10/005). Various stakeholders, inside and outside the EPA, had called for a more comprehensive characterization of risks, so the EPA re-examined the current recommended approach for applying the toxicity equivalence methodology. The EPA developed and revised, in response to public comments and recommendations from peer reviewers, the aforementioned guidance document to assist the EPA scientists in using this methodology and to inform the EPA decision makers, other agencies and the public about this methodology. The revised methodology includes the following changes to TEFs that HMIWI would use to determine compliance with the HMIWI dioxin/furan TEQ emissions limits:

Dioxin/furan congener	Toxicity equivalence factor	
	1997 EG/2000 federal plan	Today's proposed amendments to federal plan
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5	1

Dioxin/furan congener	Toxicity equivalence factor	
	1997 EG/2000 federal plan	Today's proposed amendments to federal plan
Octachlorinated dibenzo-p-dioxin	0.001	0.0003
2,3,4,7,8-pentachlorinated dibenzofuran	0.5	0.3
1,2,3,7,8-pentachlorinated dibenzofuran	0.05	0.03
Octachlorinated dibenzofuran	0.001	0.0003

To incorporate these latest revisions to TEFs, we are proposing to amend Table 2 to subpart HHH in today's action.

VI. Summary of Proposed Amendments to HMIWI New Source Performance Standards

A. What are the proposed amendments to the emissions limits?

The 2009 amended EG removed provisions from the 1997 standards at 40 CFR 60.56c and 60.37e that exempted HMIWI from the standards during periods of startup, shutdown and malfunction (SSM) provided that no hospital waste or medical/infectious waste was being charged to the unit during those SSM periods. The 2009 EG requires that the emissions limits as listed above in Table 1, regardless of a SSM event, be met at all times. However, in one provision of the NSPS, section 60.56c(d)(2), the EPA inadvertently failed to delete a SSM exemption we had intended to eliminate, and to better reflect the EPA's intent in the 2009 final rule, today's action also proposes to amend that section of the NSPS to remove the accidentally retained SSM exemption. This action is necessary to make the NSPS continuously applicable, as required under CAA section 302(k) and under the U.S. Court of Appeals for the DC Circuit's 2008 *Sierra Club* v. *EPA* ruling. Our rationale for this amendment was presented in the Oct. 6. 2009 final rule, at 74 FR 51368, 51375 and 51393–95 (Oct. 6, 2009), and we hereby incorporate by reference that rationale in order to complete the regulatory amendments we intended to make at the time. Today's action also proposes to remove the SSM exemption from the 2000 federal plan at 40 CFR 62.14413, and proposes that the emissions limits apply at all times, for the same reasons.

VII. HMIWI That Have or Will Shutdown

A. Units That Plan to Close Rather Than Comply

The 2000 federal plan established that if you planned to permanently close your currently operating HMIWI, you must have done so by the date 1 year after publication of the final federal plan in the **Federal Register**. Today's proposed amended federal plan retains this provision so that if you plan to permanently close your currently operating HMIWI, you must do so by the date 1 year after publication of the final amended federal plan in the **Federal Register**. The proposed amendments will allow HMIWI owners or operators that are planning to shutdown the opportunity to petition the EPA for an extension beyond the 1-year compliance date (but no later than October 6, 2014). An example of a facility that might petition the EPA for such an extension is a facility installing an on-site alternative waste treatment technology. It is possible that installation cannot be completed within 1 year and the facility has no feasible waste disposal options other than on-site incineration while the alternative technology is being installed. The requirements for a petition for an extension to shutdown under today's proposed federal plan will update the compliance date requirements set forth at § 62.14471 of subpart HHH.

If you continue to operate your HMIWI 1 year after publication of the final amendments to the federal plan in the **Federal Register**, then you must comply with the operator training and qualification requirements and the inspection requirements of the plan by the date 1 year after publication of the final amendments. This requirement includes HMIWI that comply within 1 year, as well as those that have been granted an extension beyond the 1-year compliance date (*i.e.,* HMIWI with extended retrofit schedules and HMIWI granted an extension to shutdown after the 1-year compliance date). In addition, while still in operation, you are subject to the same requirements for Title V operating permits that apply to units that will not shutdown.

B. Inoperable Units

Retaining certain aspects of the 2000 federal plan, today's proposed revised federal plan includes that in cases where a HMIWI has already shutdown, has been rendered inoperable and does not intend to restart, the HMIWI may be left off the source inventory in a revised/new state plan or this proposed amended federal plan. A HMIWI that has been rendered inoperable would not be covered by the amended federal plan. The HMIWI owner or operator may do one the following to render a HMIWI inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. HMIWI That Have Shutdown

Retaining certain aspects of the 2000 federal plan, today's revised federal plan proposal includes any HMIWI that are known to have already shutdown (but are not known to be inoperable) in the source inventory. These HMIWI should be identified in any revised/new state plan submitted to the EPA.

1. Restarting Before the Final Compliance Date

If the owner or operator of an inactive HMIWI plans to restart before the final compliance date, the owner or operator must submit a control plan for the HMIWI and bring the HMIWI into compliance with the applicable compliance schedule. Final compliance is required for all pollutants and all HMIWI no later than the final compliance date.

2. Restarting After the Final Compliance Date

Under this federal plan, as amended, a control plan is not needed for inactive HMIWI that restart after the final compliance date. However, before restarting, operators of these HMIWI would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications upon restarting. Performance testing to demonstrate compliance would be required within 180 days after restarting. There is no need to show that the increments of progress have been met since these steps would have occurred before restart while the HMIWI was shutdown and not generating emissions. A HMIWI that operates out of compliance after the final compliance date would be in

violation of the amended federal plan and subject to enforcement action.

VIII. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, the EPA is required to adopt EG that are applicable to existing solid waste incineration sources. These EG are not enforceable until the EPA approves a state plan or adopts a federal plan that implements and enforces them and the state or federal plan has become effective. As discussed above, the federal plan regulates HMIWI in states that do not have approved plans in effect to implement the amended EG.

Congress has determined that the primary responsibility for air pollution prevention and control rests with state and local agencies. (See section 101(a)(3) of the CAA.) Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the state and local agencies take the primary responsibility for ensuring that the emissions limitations and other requirements in the EG are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that the EPA establish procedures that are similar to those under section 110(c) for state implementation plans. Although Congress required the EPA to propose and promulgate a federal plan for states that fail to submit approvable state plans on time, states may submit approvable revised/new plans after promulgation of the amended HMIWI federal plan. The EPA strongly encourages states that are unable to submit approvable revised/new plans to request delegation of the amended federal plan so that they can have primary responsibility for implementing the revised EG, consistent with the intent of Congress.

Approved and effective revised/new state plans or delegation of the amended federal plan is the EPA's preferred outcome since the EPA believes that state and local agencies not only have the responsibility to carry out the revised EG but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, the EPA will do all that it can to expedite delegation of the amended federal plan to state and local agencies, whenever possible, in cases where states are unable to develop and submit approvable state plans.

B. Delegation of the Federal Plan and Retained Authorities

As similarly described in the 2000 federal plan, if a state or tribe intends to take delegation of the amended federal plan, the state or tribe should submit to the appropriate EPA Regional Office a written request for delegation of authority. The state or tribe should explain how it meets the criteria for delegation. See generally ''Good Practices Manual for Delegation of NSPS and NESHAP'' (EPA, February 1983). The letter requesting delegation of authority to implement the amended federal plan should: (1) Demonstrate that the state or tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program, (2) include an inventory of affected HMIWI units, which includes those that have ceased operation but have not been dismantled, include an inventory of the affected units' air emissions and a provision for state progress reports to the EPA, (3) certify that a public hearing is held on the state delegation request, and (4) include a memorandum of agreement between the state or tribe and the EPA that sets forth the terms and conditions of the delegation, the effective date of the agreement and would serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation of authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a state or tribe, the EPA will implement the amended federal plan. Also, if a state or tribe fails to properly implement a delegated portion of the amended federal plan, the EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the state or tribe even when a state or tribe has received delegation of the amended federal plan. In all cases where the amended federal plan is delegated, the EPA will retain and will not transfer authority to a state or tribe to approve the following items that include additional items to those listed in the 2000 federal plan as to correspond to those changes promulgated in the 2009 HMIWI rules:

(1) Alternative site-specific operating parameters established by facilities using HMIWI controls other than a wet scrubber, dry scrubber followed by a FF, or dry scrubber followed by a FF and wet scrubber;

(2) Alternative methods of demonstrating compliance, including the following methods outlined in the October 6, 2009, amendments to the HMIWI EG:

- Approval of CEMS for PM, HCl, multi-metals and Hg where used for purposes of demonstrating compliance;
- Approval of continuous automated sampling systems for dioxin/furan and Hg where used for purposes of demonstrating compliance; and
- Approval of major alternatives to test methods;

(3) Approval of major alternatives to monitoring (added in 2009 amended EG);

(4) Waiver of recordkeeping requirements (added in 2009 amended EG); and

(5) Performance test and data reduction waivers under 40 CFR 60.8(b) (added in 2009 amended EG).

Retaining what was established in the 2000 federal plan, today's proposed amended federal plan also specifies that hospital/medical/infectious waste incinerator owners or operators who wish to establish alternative operating parameters, alternative methods of demonstrating compliance, major alternatives to monitoring, waiver of recordkeeping requirements or performance test and data reduction waivers should submit a request to the Regional Office Administrator with a copy to the appropriate state.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to state and local agencies: (1) The EPA approval of a revised/new state plan after the amended federal plan is in effect; and (2) if a state does not submit or obtain approval of its own revised/new plan, the EPA delegation to a state of the authority to implement certain portions of this amended federal plan to the extent appropriate and if allowed by state law. Both of these options are maintained from those which were first outlined in the 2000 federal plan, are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State Plan

After HMIWI in a state become subject to the amended federal plan, the state or local agency may still adopt and submit a revised/new plan to the EPA. If the EPA determines that the revised/new state plan is as protective as the revised EG, the EPA will approve the revised/new state plan. If the EPA determines that the plan is not as protective as the revised EG, the EPA will disapprove the plan and the HMIWI covered in the state plan would remain subject to the amended federal plan until a revised

state plan covering those HMIWI is approved and effective. Prior to disapproval, EPA will work with states to attempt to reconcile areas of the plan that remain not as protective as the revised EG.

Upon the effective date of a revised/new state plan, the amended federal plan would no longer apply to HMIWI covered by such a plan and the state or local agency would implement and enforce the revised/new state plan in lieu of the amended federal plan. When an EPA Regional Office approves a revised/new state plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to state agencies the authority to implement this amended federal plan. As discussed above, the EPA believes that it is advantageous and the best use of resources for state or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the amended federal plan to the extent appropriate and where authorized by state law. If a state requests delegation, the EPA will generally delegate the entire amended federal plan to the state agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, HMIWI inspections and preparation of draft notices of violation but will not include any retained authorities. State agencies that have taken delegation, as well as the EPA, will have responsibility for bringing enforcement actions against sources violating federal plan provisions.

D. Implementing Authority

The EPA Regional Administrators have been delegated the authority for implementing the HMIWI federal plan amendments. All reports required by these amendments to the federal plan should be submitted to the appropriate Regional Office Administrator. Section II.C. of this preamble includes a table that lists names and addresses of the EPA Regional Office contacts and the states they cover.

IX. Title V Operating Permits

All existing HMIWI regulated under state or federal plans implementing the 1997 EG and any HMIWI that was regulated under the 1997 NSPS should have already applied for and obtained Title V operating permits, as required under the EG. Title V operating permits assure compliance with all applicable federal requirements for HMIWI, including all applicable CAA section 129 requirements. (See 40 CFR 70.2,70.6(a)(1), 71.2 and 71.6(a)(1).) Title V operating permits for the above-noted sources may, however, need to be reopened to incorporate the requirements of a revised/new state plan, this amended federal plan or more stringent NSPS requirements.

For more background information on the interface between CAA section 129 and Title V, including the EPA's interpretation of CAA section 129(e), as well as information on submitting Title V permit applications, updating existing Title V permit applications and reopening existing Title V permits, see the final Federal Plan for Commercial and Industrial Solid Waste Incinerators, October 3, 2003 (68 FR 57518, 57532). See also the final Federal Plan for Hospital Medical Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49877).

Today's proposed revised federal plan maintains the 2000 federal plan approach, specifying that owners or operators of HMIWI that burn only pathological waste, low-level radioactive waste and/or chemotherapeutic waste and co-fired combustors, as defined in § 62.14490 of subpart HHH, must comply only with certain recordkeeping and reporting requirements set forth in today's proposed amended federal plan. (See § 62.14400.) These HMIWI and co-fired combustors would not be subject to the emissions control-related requirements of the amended federal plan as long as they complied with the recordkeeping and reporting requirements set forth as conditions for their exemption. Consistent with the 2000 federal plan, owners and operators of these sources as listed above would not be required to obtain Title V operating permits as a matter of federal law if the only reason they would potentially be subject to Title V is these non-emissions control-related recordkeeping and reporting requirements. (See § 62.14480.) Originally explained in the 2000 federal plan, today's rule maintains that owners and operators of HMIWI that burn only pathological waste, low-level radioactive waste and/or chemotherapeutic waste and co-fired combustors that do not comply with the recordkeeping and reporting requirements necessary to qualify for exemption from the other requirements of the amended federal plan would become subject to those other requirements and would have to obtain Title V permits. Moreover as stated in the 2000 federal plan and again in today's proposal, if, in the future, the EPA promulgates regulations subjecting any of these sources to requirements other than these recordkeeping and reporting requirements, these sources could become subject to Title V at that time.

A. Title V and Delegation of a Federal Plan

We have previously stated our position that issuance of a Title V permit is not equivalent to the approval of a state plan or delegation of a federal plan.[3] Legally, delegation of a standard or requirement results in a delegated state or tribe standing in for the EPA as a matter of federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a state (except for functions that the EPA retains for itself) upon delegation.[4] Although a state or tribe may have the authority under state or tribal law to incorporate section 111/129 requirements into its Title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 federal plan, the state or tribe is not standing in for the EPA as a matter of federal law in this situation. Where a state or tribe does not take delegation of a section 111/129 federal plan, obligations that a source has to the EPA under the federal plan continue after a Title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the federal plan from the EPA to a state or tribe. As mentioned above, a state or tribe may have the authority under state or tribal law to incorporate section 111/129 requirements into its Title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 federal plan.[5] Some

[3] For the sake of brevity, the discussion from the proposed federal plan regarding Title V and delegation of a federal plan is not being repeated. *See* ''Title V and Delegation of a Federal Plan'' section of the proposed federal plan for CISWI, November 25, 2002 (67 FR 70640, 70652). Nevertheless, the preamble language from this section in the proposed rule is hereby reaffirmed in this final rule.

[4] If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, *e.g.,* alternative methods of demonstrating compliance.

[5] The EPA interprets the phrase ''assure compliance'' in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce each applicable standard, regulation or requirement which must be included in the Title V permits the permitting authorities issue. *See* definition of ''applicable requirement'' in 40 CFR 70.2. *See also* 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

states or tribes, however, may not be able to implement and enforce a section 111/129 standard in a Title V permit until the section 111/129 standard has been delegated. In these situations, a state or tribe should not issue a part 70 permit to a source subject to a federal plan before taking delegation of the section 111/129 federal plan. If a state or tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a state or tribe does not need to take delegation of the section 111/129 requirements for purposes of Title V permittin.[6] In practical terms, without approval of a state or tribal plan, delegation of a federal plan, or an adequate AG's opinion, states and tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a state's or tribe's part 70 program. As a result, prior to a state or tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 federal plan, the state or tribe, the EPA Regional Office and source in question are advised to ensure that delegation of the relevant federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion. In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a federal plan, a section 111/129 source subject to the federal plan in that state must simultaneously submit to both the EPA and the state or tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in Title V permits, the permitting authority needs to receive these reports at the same time as the EPA. In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a federal plan, the EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any Title V permits. Moreover, in this situation, the EPA Regional Offices will continue to be responsible for developing progress reports and conducting any other administrative functions required under this federal plan or any other section 111/129 federal plan. See the section IV.J. of this preamble titled ''Progress Reports''. It is important to note that the EPA is not using its authority under 40 CFR part 70.4(i)(3) to request that all states and tribes which do not take delegation of this federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a state's or tribe's authority to incorporate section 111/129 requirements into a Title V permit and implement and enforce these requirements in that context without delegation.

[6] It is important to note that an AG's opinion submitted at the time of initial Title V program approval is sufficient if it demonstrates that a state or tribe has adequate authority to incorporate CAA section 111/129 requirements into its Title V permits and to implement and enforce these requirements through its Title V permits without delegation.

X. Statutory and Executive Order Reviews

This section addresses the following administrative requirements: Executive Orders 12866 and 13563, 13132, 13175, 13045, 13211 and 12898, PRA, RFA, UMRA and the NTTAA. This two-part action proposes a revised federal plan and proposes amendments to the final 2009 NSPS. Since this proposed federal plan rule merely implements the amended HMIWI EG promulgated on October 6, 2009 (codified at 40 part 60, subpart Ce) as they apply to HMIWI and the proposed NSPS amendments clarify EPA's original intent removing the startup, shutdown, and malfunction exemption in the final NSPS rule October 6, 2009 (codified at 40 part 60, subpart Ec) and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements in the preamble to the 2009 rule promulgating the amended EG and NSPS (74 FR 51368–51402, October 6, 2009).

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

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

The EPA considered the 2009 amendments to the HMIWI EG to be significant and the rule was reviewed by the Office of Management and Budget (OMB) in 2009. (See 74 FR 51400.) The federal plan proposed today would simply implement the EG as amended in 2009 and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2009 amended EG. Therefore, this regulatory action is considered ''not significant'' under Executive Order 12866 and 13563.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose any new information collection burden. This action simply proposes amendments to the hospital/medical/infectious waste incinerators federal plan to implement the amended emission guidelines adopted on October 6, 2009, for those states that do not have an approved revised/new state plan implementing the emission guidelines. Additionally, today's action also proposes to amend the new source performance standards to better reflect EPA's original intent in the October 6, 2009, final rule in eliminating an exemption during startup, shutdown and malfunction periods from the requirement to comply with standards at all times. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 60 subparts CE and EC under the provisions on the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2060–0422. The OMB Control Numbers for EPA's regulation in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (SISNOSE). Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed action on small entities, small entity is defined as follows: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. During the 2009 HMIWI EG rulemaking, the EPA estimated that a substantial number of small entities would not be significantly impacted by the promulgated EG. (See 74 FR at 51400–51401.) This proposed amended federal plan does not establish any new requirements.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain a federal mandate that may result in expenditures of $100 million or more for state and local governments, in the aggregate, or the private sector in any 1 year. In the preamble to the 2009 EG, the national total cost to comply with the final rule was estimated to be approximately $15.5 million in each of the first 3 years of compliance. This proposed federal plan, as amended, will apply to only a subset of the units considered in the cost analysis for the EG, and less than 10 percent of the units nationwide are state or locally owned. Thus, the proposed federal plan, as amended, is not subject to the requirements of sections 202 or 205 of UMRA.

In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because, as noted above, the burden is small and the regulation does not unfairly apply to small governments. Therefore, the proposed rule is also not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action will not impose substantial direct compliance costs on state or local governments and will not preempt state law. Thus, Executive Order 13132 does not apply to this proposed action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The EPA is not aware of any HMIWI owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

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

The EPA interprets Executive Order 13045 (62 FR 19885; April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

This proposed rulemaking involves technical standards. The EPA proposes to use two VCS in today's action. One VCS, ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in the 2009 EG and the proposed rule for its manual method of measuring the content of the exhaust gas as an acceptable alternative to EPA Method 3B of appendix A–2. This standard is available from the ASME, P.O. Box 2900, Fairfield, NJ 07007–2900; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112.

Another VCS, ASTM D6784–02, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' is cited in the 2009 EG and the proposed rule as an acceptable alternative to EPA Method 29 of appendix A–8 (portion for Hg only) for measuring Hg. This standard is available from the ASTM, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

While the EPA has identified 16 VCS as being potentially applicable to the proposed rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would be impractical because they do not meet the objectives of the standards cited in this proposed rule. See the docket for the 2009 EG (Docket ID No. EPA–HQ–OAR–2006–0534), which is being implemented under today's proposed action, for the reasons for these determinations.

Under 40 CFR 62.14495, the EPA Administrator retains the authority of approving alternative methods of demonstrating compliance as established under 40 CFR 60.8(b) and 60.13(i) of 40 CFR part 60, subpart A (NSPS General Provisions). A source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required EPA test methods, performance specifications or procedures.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

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

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

The EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

This proposed action implements national standards in the 2009 amendments to the HMIWI EG that would result in reductions in emissions of Cd, CO, dioxins/furans, HCl, Pb, Hg, NO_X, PM and SO_2 from all HMIWI and thus decrease the amount of such emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Parts 60 and 62

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 2012.

Lisa P. Jackson,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS

For the reasons stated in the preamble, Title 40, chapter I, parts 60 and 62 of the CFR are proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart Ec—[Amended]

2. The subpart heading for subpart Ec is revised to read as follows:

Subpart Ec—Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators: Final Rule Amendments

3. Section 60.56c is amended by revising the first sentence of paragraph (d)(2) to read as follows:

§ 60.56c Compliance and performance testing.

(d) * * *

(2) Following the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, ensure that the affected facility does not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating parameters listed in table 3 of this subpart and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times. * * *

* * * * *

PART 62—FEDERAL PLAN REQUIREMENTS FOR HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS CONSTRUCTED ON OR BEFORE DECEMBER 1, 2008

4. The authority citation for part 62 continues to read as follows:

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

Subpart HHH—[Amended]

5. The subpart heading for subpart HHH is revised to read as follows:

Subpart HHH—Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before December 1, 2008

6. Section 62.14400 is amended by revising paragraphs (a) introductory text, (a)(2), and (c) to read as follows:

§ 62.14400 Am I subject to this subpart?

(a) You are subject to this subpart if paragraphs (a)(1), (2)(i) or (ii), and (3) of this section are all true:

* * * * *

(2)(i) Construction of the HMIWI commenced on or before June 20, 1996, or modification of the HMIWI commenced on or before March 16, 1998; or

(ii) Construction of the HMIWI commenced after June 20, 1996 but no later than December 1, 2008, or modification of the HMIWI commenced after March 16, 1998 but no later than April 6, 2010; and

* * * * *

(c) Owners or operators of sources that qualify for the exemptions in paragraphs (b)(1) or (b)(2) of this section must submit records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in (b)(1) or (b)(2) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Records required under paragraphs (b)(1) and (b)(2) of this section must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under paragraphs (b)(1) and (b)(2) of this section must be maintained by the EPA or delegated enforcement authority for as long as the source is operating under such exempt status. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

7. Section 62.14401 is revised to read as follows:

§ 62.14401 How do I determine if my HMIWI is covered by an approved and effective state or tribal plan?

This part (40 CFR part 62) contains a list of all states and tribal areas with approved Clean Air Act (CAA) section 111(d)/129 plans in effect. However, this part is only updated once a year. Thus, if this part does not indicate that your state or tribal area has an approved and effective plan, you should contact your state environmental agency's air director or your EPA Regional Office to determine if approval occurred since publication of the most recent version of this part. A state may also meet its CAA section 111(d)/129 obligations by submitting an acceptable written request for delegation of the federal plan that meets the requirements of this section. This is the only other option for a state to meet its 111(d)/129 obligations.

(a) An acceptable federal plan delegation request must include the following:

(1) A demonstration of adequate resources and legal authority to administer and enforce the federal plan.

(2) The items under § 60.25(a) and 60.39e(c).

(3) Certification that the hearing on the state delegation request, similar to the hearing for a state plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(4) A commitment to enter into a Memorandum of Agreement with the Regional Administrator who sets forth the terms, conditions and effective date of the delegation and that serves as the mechanism for the transfer of authority. Additional guidance and information is given in the EPA's Delegation Manual,

Item 7–139, Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129(b)(3) federal plans.

(b) A state with an already approved HMIWI CAA section 111(d)/129 state plan is not precluded from receiving EPA approval of a delegation request for the revised federal plan, providing the requirements of paragraph (a) of this section are met, and at the time of the delegation request, the state also requests withdrawal of the EPA's previous state plan approval.

(c) A state's CAA section 111(d)/129 obligations are separate from its obligations under Title V of the CAA.

8. Section 62.14402 is revised to read as follows:

§ 62.14402 If my HMIWI is not listed on the federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart include, but are not limited to, the inventory of sources listed in Docket ID No. EPA–HQ–OAR–2011–0405 for the federal plan. Review the applicability of § 62.14400 to determine if you are subject.

9. Section 62.14403 is revised to read as follows:

§ 62.14403 What happens if I modify an existing HMIWI?

(a) If you commenced modification (defined in 40 CFR 62.14490) of an existing HMIWI after April 6, 2010, you are subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c), as amended, and you are not subject to this subpart, except as provided in paragraph (b) of this section.

(b) If you made physical or operational changes to your existing HMIWI solely for the purpose of complying with this subpart, these changes are not considered a modification and you are not subject to 40 CFR part 60, subpart Ec (40 CFR 60.50c through 60.58c), as amended. You remain subject to this subpart.

10. Section 62.14412 is revised to read as follows:

§ 62.14412 What stack opacity and visible emissions requirements apply?

(a) Your HMIWI (regardless of size category) must not discharge into the atmosphere from the stack any gases that exhibit greater than 6 percent opacity (6-minute block average).

(b) Your HMIWI (regardless of size category) must not discharge into the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (*i.e.,* 9 minutes per 3-hour period), as determined by EPA Reference Method 22 of 40 CFR part 60, appendix A–7, except as provided in paragraphs (b)(1) and (2) of this section.

(1) The emissions limit specified in paragraph (b) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emissions limit does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(2) The provisions specified in paragraph (b) of this section do not apply during maintenance and repair of ash conveying systems. Maintenance and/or repair must not exceed 10 operating days per calendar quarter unless you obtain written approval from the state agency establishing a date when all necessary maintenance and repairs of ash conveying systems are to be completed.

11. Section 62.14413 is revised to read as follows:

§ 62.14413 When do the emissions limits and stack opacity and visible emissions requirements apply?

The emissions limits and stack opacity and visible emissions requirements of this subpart apply at all times.

12. Section 62.14422 is amended by adding paragraph (a)(14) to read as follows:

* * * * *

(14) Training in waste segregation according to § 62.14430(c).

13. Section 62.14425 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) You must conduct your initial review of the information listed in § 62.14424 by [date 6 months after publication of final rule], or prior to assumption of responsibilities affecting HMIWI operation, whichever is later.

* * * * *

14. Section 62.14431 is revised to read as follows:

§ 62.14431 What must my waste management plan include?

(a) Your waste management plan must identify both the feasibility of, and the approach for, separating certain components of solid waste from the health care waste stream in order to reduce the amount of toxic emissions from incinerated waste. The waste management plan you develop may address, but is not limited to, elements such as segregation and recycling of paper, cardboard, plastics, glass, batteries, food waste and metals (*e.g.,* aluminum cans, metals-containing devices); segregation of non-recyclable wastes (*e.g.,* polychlorinated biphenyl-containing waste, pharmaceutical waste, and mercury-containing waste such as dental waste); and purchasing recycled or recyclable products. Your waste management plan may include different goals or approaches for different areas or departments of the facility and need not include new waste management goals for every waste stream. When you develop your waste management plan, it should identify, where possible, reasonably available additional waste management measures, taking into account the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other potential environmental or energy impacts they might have. In developing your waste management plan, you must consider the American Hospital Association (AHA) publication titled ''Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities.'' This publication (AHA Catalog No. 057007) is available for purchase from the AHA Services, Inc., Post Office Box 933283, Atlanta, Georgia 31193–3283.

(b) If you own or operate commercial HMIWI, you must conduct training and education programs in waste segregation for each of your waste generator clients and ensure that each client prepares its own waste management plan that includes, but is not limited to, the provisions listed in this section.

(c) If you own or operate commercial HMIWI, you must conduct training and education programs in waste segregation for your HMIWI operators.

15. Section 62.14432 is revised to read as follows:

§ 62.14432 When must my waste management plan be completed?

As specified in §§ 62.14463 and 62.14464, you must submit your waste management plan with your initial report, which is due 60 days after you demonstrate initial compliance with the amended emissions limits, by conducting an initial performance test or submitting the results of previous emissions tests, provided the conditions in § 62.14451(e) are met.

16. Section 62.14440 is revised to read as follows:

§ 62.14440 Which HMIWI are subject to inspection requirements?

(a) Small rural HMIWI (defined in § 62.14490) are subject to the HMIWI inspection requirements.

(b) All HMIWI equipped with one or more air pollution control devices are subject to the air pollution control device inspection requirements.

17. Section 62.14441 is revised to read as follows:

§ 62.14441 When must I inspect my HMIWI?

(a) You must inspect your small rural HMIWI by [date 1 year after publication of final rule].

(b) You must conduct inspections of your small rural HMIWI as outlined in § 62.14442(a) annually (no more than 12 months following the previous annual HMIWI inspection).

(c) You must inspect the air pollution control devices on your large, medium, small or small rural HMIWI by [date 1 year after publication of final rule].

(d) You must conduct the air pollution control device inspections as outlined in § 62.14442(b) annually (no more than 12 months following the previous annual air pollution control device inspection).

18. Section 62.14442 is amended as follows:

a. By redesignating paragraphs (a) through (q) as paragraphs (a)(1) through (a)(18);

b. By redesignating introductory text as paragraph (a) introductory text;

c. By revising newly designated paragraph (a) introductory text; and

d. By adding paragraph (a)(17)

e. By adding paragraph new paragraph (b).

§ 62.14442 What must my inspection include?

(a) At a minimum, you must do the following during your HMIWI inspection:

* * * * *

(17) Include inspection elements according to manufacturer's recommendations; and

(18) * * *

(b) At a minimum, you must do the following during your air pollution control device inspection:

(1) Inspect air pollution control device(s) for proper operation, if applicable;

(2) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

(3) Include inspection elements according to manufacturer's recommendations; and

(4) Generally observe that the equipment is maintained in good operating condition.

19. Section 62.14443 is revised to read as follows:

§ 62.14443 When must I do repairs?

(a) You must complete any necessary repairs to the HMIWI within 10 operating days of the HMIWI inspection unless you obtain written approval from the EPA Administrator (or delegated enforcement authority) establishing a different date when all necessary repairs of your HMIWI must be completed.

(b) You must complete any necessary repairs to the air pollution control device within 10 operating days of the air pollution control device inspection unless you obtain written approval from the EPA Administrator (or delegated enforcement authority) establishing a different date when all necessary repairs of your air pollution control device must be completed. During the time that you effecting repairs to your air pollution control device, all emissions standards remain in effect according to § 62.14413.

20. Section 62.14450 is removed and reserved.

21. Section 62.14451 is amended as follows:

a. By revising paragraph (a);

b. By adding paragraph (b)(3);

c. By redesignating paragraph (c) as paragraph (d);

d. By adding new paragraph (c); and

e. By adding paragraph (e).

§ 62.14451 What are the testing requirements?

(a) Except as specified in paragraph (e) of this section, you must conduct an initial performance test for PM, opacity, CO, dioxin/furan, HCl, Pb, Cd, Hg, SO_2, NO_X and fugitive ash emissions using the test methods and procedures outlined in § 62.14452.

(b) * * *

(3) If you use a large HMIWI that commenced construction or modification according to § 62.14400(a)(2)(ii), determine compliance with the visible emissions limits for fugitive emissions from flyash/bottom ash storage and handling by conducting a performance test using EPA Reference Method 22 of 40 CFR part 60, appendix A–7 on an annual basis (no more than 12 months following the previous performance test).

(c) The 2,000 lb/wk limitation for small rural HMIWI does not apply during performance tests.

* * * * *

(e) You may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that the conditions in paragraphs (e)(1) through (3) of this section are met:

(1) Your previous emissions tests must have been conducted using the applicable procedures and test methods listed in § 62.14452. Previous emissions test results obtained using the EPA-accepted voluntary consensus standards are also acceptable.

(2) The HMIWI at your facility must currently be operated in a manner (*e.g.*, with charge rate, secondary chamber temperature, *etc.*) that would be expected to result in the same or lower emissions than observed during the previous emissions test(s), and the HMIWI may not have been modified such that emissions would be expected to exceed the results from previous emissions test(s).

(3) The previous emissions test(s) must have been conducted in 1996 or later.

22. Section 62.14452 is amended as follows:

a. By revising paragraphs (c), (d), and (f);

b. By redesignating paragraph (l) as paragraph (o);

c. By revising newly designated paragraph (o);

d. By redesignating paragraph (m) as paragraph (r);

e. By redesignating paragraphs (g) through (k) as paragraphs (i) through (m);

f. By revising newly designated paragraphs (i) through (m);

g. By adding new paragraphs (g) and (h);

h. By adding paragraphs (n), (p) and (q).

§ 62.14452 What test methods and procedures must I use?

* * * * *

(c) You must use EPA Reference Method 1 of 40 CFR part 60, appendix A–1 to select the sampling location and number of traverse points;

(d) You must use EPA Reference Method 3, 3A or 3B of 40 CFR part 60, appendix A–2 for gas composition analysis, including measurement of oxygen concentration. You must use EPA Reference Method 3, 3A or 3B of 40 CFR part 60, appendix A–2 simultaneously with each reference method. You may use ASME PTC–19–10–1981–Part 10 (incorporated by reference in 40 CFR 60.17) as an alternative to EPA Reference Method 3B;

* * * * *

(f) You must use EPA Reference Method 5 of 40 CFR part 60, appendix A–3 or Method 26A or Method 29 of 40 CFR part 60, appendix A–8 to measure particulate matter (PM) emissions. You may use bag leak detection systems, as specified in § 62.14454(e), or PM continuous emissions monitoring systems (CEMS), as specified in paragraph (o) of this section, as an alternative to demonstrate compliance with the PM emissions limit;

(g) You must use EPA Reference Method 6 or 6C of 40 CFR part 60, appendix A–4 to measure SO_2 emissions;

(h) You must use EPA Reference Method 7 or 7E of 40 CFR part 60, appendix A–4 to measure NO_X emissions;

(i) You must use EPA Reference Method 9 of 40 CFR part 60, appendix A–4 to measure stack opacity. You may use bag leak detection systems, as specified in § 62.14454(e), or PM CEMS, as specified in paragraph (o) of this section, as an alternative to demonstrate compliance with the opacity requirements;

(j) You must use EPA Reference Method 10 or 10B of 40 CFR part 60, appendix A–4 to measure the CO emissions. You may use CO CEMS, as specified in paragraph (o) of this section, as an alternative to demonstrate compliance with the CO emissions limit;

(k) You must use EPA Reference Method 23 of 40 CFR part 60, appendix A–7 to measure total dioxin/furan emissions. The minimum sample time must be 4 hours per test run. You may elect to sample dioxins/furans by installing, calibrating, maintaining and operating a continuous automated sampling system, as specified in paragraph (p) of this section, as an alternative to demonstrate compliance with the dioxin/furan emissions limit. If you have selected the toxic equivalency (TEQ) standards for dioxin/furans under § 62.14411, you must use the following procedures to determine compliance:

(1) Measure the concentration of each dioxin/furan tetra-through octa-congener emitted using EPA Reference Method 23 of 40 CFR part 60, appendix A–7;

(2) For each dioxin/furan congener measured in accordance with paragraph (k)(1) of this section, multiply the congener concentration by its corresponding TEQ factor specified in Table 2 of this subpart;

(3) Sum the products calculated in accordance with paragraph (k)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of TEQ.

(l) You must use EPA Reference Method 26 or 26A of 40 CFR part 60, appendix A–8 to measure HCl emissions. You may use HCl CEMS as an alternative to demonstrate compliance with the HCl emissions limit;

(m) You must use EPA Reference Method 29 of 40 CFR part 60, appendix A–8 to measure Pb, Cd and Hg emissions. You may use ASTM D6784–02 (incorporated by reference in 40 CFR 60.17) as an alternative to EPA Reference Method 29 for measuring Hg emissions. You may also use Hg CEMS, as specified in paragraph (o) of this section, or a continuous automated sampling system for monitoring Hg emissions, as specified in paragraph (q) of this section, as an alternative to demonstrate compliance with the Hg emissions limit. You may use multi-metals CEMS, as specified in paragraph (o) of this section, as an alternative to EPA Reference Method 29 to demonstrate compliance with the Pb, Cd or Hg emissions limits;

(n) You must use EPA Reference Method 22 of 40 CFR part 60, appendix A–7 to determine compliance with the fugitive ash emissions limit under § 60.52c(c). The minimum observation time must be a series of three 1-hour observations.

(o) If you are using a CEMS to demonstrate compliance with any of the emissions limits under §§ 62.14411 or 62.14412, you:

(1) Must determine compliance with the appropriate emissions limit(s) using a 12-hour rolling average, calculated as specified in section 12.4.1 of EPA Reference Method 19 of 40 CFR part 60, appendix A–7. Performance tests using EPA Reference Methods are not required for pollutants monitored with CEMS.

(2) Must operate a CEMS to measure oxygen concentration, adjusting pollutant concentrations to 7 percent oxygen as specified in paragraph (e) of this section.

(3) Must operate all CEMS in accordance with the applicable procedures under appendices B and F of 40 CFR part 60. For those CEMS for which performance specifications have not yet been promulgated (HCl, multi-metals), this option takes effect on the date a final performance specification is published in the **Federal Register** or the date of approval of a site-specific monitoring plan.

(4) May substitute use of a CO CEMS for the CO annual performance test and minimum secondary chamber temperature to demonstrate compliance with the CO emissions limit.

(5) May substitute use of an HCl CEMS for the HCl annual performance test, minimum HCl sorbent flow rate and minimum scrubber liquor pH to demonstrate compliance with the HCl emissions limit.

(6) May substitute use of a PM CEMS for the PM annual performance test and minimum pressure drop across the wet scrubber, if applicable, to demonstrate compliance with the PM emissions limit.

(p) If you are using a continuous automated sampling system to demonstrate compliance with the dioxin/furan emissions limits, you must record the output of the system and analyze the sample according to EPA Reference Method 23 of 40 CFR part 60, appendix A–7. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from monitors is published in the **Federal Register** or the date of approval of a site-specific monitoring plan. If you elect to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Reference Method 23 of 40 CFR part 60, appendix A–7, you must install, calibrate, maintain and operate a continuous automated sampling system and comply with the requirements specified in 40 CFR 60.58b(p) and (q) of subpart Eb.

(q) If you are using a continuous automated sampling system to demonstrate compliance with the Hg emissions limits, you must record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet appropriate performance criteria. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to Hg from monitors is published in the **Federal Register** or the date of approval of a site-specific monitoring plan. If you elect to continuously sample Hg emissions instead of sampling and testing using EPA Reference Method 29 of 40 CFR part 60, appendix A–8, or an approved alternative method for measuring Hg emissions, you must install, calibrate, maintain and operate a continuous automated sampling system and comply with the requirements specified in 40 CFR 60.58b(p) and (q) of subpart Eb.

* * * * *

23. Section 62.14453 is amended as follows:

a. By revising paragraph (a) introductory text;

b. By revising paragraph (a)(2); and

c. By revising paragraph (b).

§ 62.14453 What must I monitor?

(a) If your HMIWI uses combustion control only, or your HMIWI is equipped with a dry scrubber followed by a fabric filter (FF), a wet scrubber, a dry scrubber followed by a FF and wet scrubber, or a selective noncatalytic reduction (SNCR) system:

* * * * *

(2) After the date on which the initial performance test is completed or is required to be completed under § 62.14470, whichever comes first, your HMIWI must not operate above any of the applicable maximum operating parameters or below any of the applicable minimum operating

parameters listed in Table 3 and measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours), at all times except during performance tests.

(b) If you are using an air pollution control device other than a dry scrubber followed by a FF, a wet scrubber, a dry scrubber followed by a FF and a wet scrubber, or a SNCR system to comply with the emissions limits under § 62.14411, you must petition the EPA Administrator for site-specific operating parameters to be established during the initial performance test and you must continuously monitor those parameters thereafter. You may not conduct the initial performance test until the EPA Administrator has approved the petition.

24. Section 62.14454 is amended as follows:

a. By revising paragraph (a);
b. By revising paragraph (b);
c. By revising paragraph (c); and
d. By adding paragraph (e).

§ 62.14454 How must I monitor the required parameters?

(a) Except as provided in §§ 62.14452(o) through (q), you must install, calibrate (to manufacturers' specifications), maintain and operate devices (or establish methods) for monitoring the applicable maximum and minimum operating parameters listed in Table 3 of this subpart (unless CEMS are used as a substitute for certain parameters as specified) such that these devices (or methods) measure and record values for the operating parameters at the frequencies indicated in Table 3 of this subpart at all times. For charge rate, the device must measure and record the date, time and weight of each charge fed to the HMIWI. This must be done automatically, meaning that the only intervention from an operator during the process would be to load the charge onto the weighing device. For batch HMIWI, the maximum charge rate is measured on a daily basis (the amount of waste charged to the unit each day).

(b) For all HMIWI, you must install, calibrate (to manufacturers' specifications), maintain and operate a device or method for measuring the use of the bypass stack, including the date, time and duration of such use.

(c) For all HMIWI, if you are using controls other than a dry scrubber followed by a FF, a wet scrubber, a dry scrubber followed by a FF and a wet scrubber, or a SNCR system to comply with the emissions limits under § 62.14411, you must install, calibrate (to manufacturers' specifications), maintain and operate the equipment necessary to monitor the site-specific operating parameters developed pursuant to § 62.14453(b).

* * * * *

(e) If you use an air pollution control device that includes a FF and are not demonstrating compliance using PM CEMS, you must determine compliance with the PM emissions limit using a bag leak detection system and meet the requirements in paragraphs (e)(1) through (12) of this section for each bag leak detection system.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Sector Policies and Programs Division; Measurement Policy Group (D–243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emissions Measurement Center Continuous Emissions Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure FF systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air FF, the bag leak detector must be installed downstream of the FF.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points or alarm delay time may not be adjusted. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete FF inspection that demonstrates that the FF is in good operating condition. Each adjustment must be recorded.

(11) Record the results of each inspection, calibration and validation check.

(12) Initiate corrective action within 1 hour of a bag leak detection system alarm; operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. If inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

25. Section 62.14455 is revised to read as follows:

§ 62.14455 What if my HMIWI goes outside of a parameter limit?

(a) Operation above the established maximum or below the established minimum operating parameter(s) constitutes a violation of established operating parameter(s). Operating parameter limits do not apply during performance tests.

(b) Except as provided in paragraph (g) or (h) of this section, if your HMIWI uses combustion control only:

And your HMIWI . . .	Then you are in violation of . . .
Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The PM, CO and dioxin/furan emissions limits.

(c) Except as provided in paragraph (f) or (g) of this section, if your HMIWI is equipped with a dry scrubber followed by a FF:

And your HMIWI . . .	Then you are in violation of . . .
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emissions limit.
(2) Operates above the maximum FF inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emissions limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum HCl sorbent flow rate (3-hour rolling average) simultaneously.	The HCl emissions limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously.	The Hg emissions limit.
(5) Uses the bypass stack	The PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.
(6) Operates above the CO emissions limit as measured by a CO CEMS, as specified in § 62.14452(o)	The CO emissions limit.
(7) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the PM emissions limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The PM emissions limit.[a]
(8) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the opacity limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The opacity limit.[a]
(9) Operates above the PM emissions limit as measured by a PM CEMS, as specified in § 62.14452(o)	The PM emissions limit.
(10) Operates above the HCl emissions limit as measured by an HCl CEMS, as specified in § 62.14452(o)	The HCl emissions limit.
(11) Operates above the Pb emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Pb emissions limit.
(12) Operates above the Cd emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Cd emissions limit.
(13) Operates above the Hg emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Hg emissions limit.
(14) Operates above the dioxin/furan emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(p).	The dioxin/furan emissions limit.
(15) Operates above the Hg emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(q).	The Hg emissions limit.

[a] If inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

(d) Except as provided in paragraph (g) or (h) of this section, if your HMIWI is equipped with a wet scrubber:

And your HMIWI . . .	Then you are in violation of . . .
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emissions limit.
(2) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum pressure drop across the wet scrubber (3-hour rolling average) or below the minimum horsepower or amperage to the system (3-hour rolling average) simultaneously.	The PM emissions limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), below the minimum secondary chamber temperature (3-hour rolling average), and below the minimum scrubber liquor flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emissions limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously.	The HCl emissions limit.
(5) Operates above the maximum flue gas temperature (3-hour rolling average) and above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) simultaneously.	The Hg emissions limit.
(6) Uses the bypass stack	The PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.

And your HMIWI . . .	Then you are in violation of . . .
(7) Operates above the CO emissions limit as measured by a CO CEMS, as specified in § 62.14452(o)	The CO emissions limit.
(8) Operates above the PM emissions limit as measured by a PM CEMS, as specified in § 62.14452(o)	The PM emissions limit.
(9) Operates above the HCl emissions limit as measured by an HCl CEMS, as specified in § 62.14452(o)	The HCl emissions limit.
(10) Operates above the Pb emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Pb emissions limit.
(11) Operates above the Cd emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Cd emissions limit.
(12) Operates above the Hg emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Hg emissions limit.
(13) Operates above the dioxin/furan emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(p).	The dioxin/furan emissions limit.
(14) Operates above the Hg emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(q).	The Hg emissions limit.

(e) Except as provided in paragraph (g) or (h) of this section, if your HMIWI is equipped with a dry scrubber followed by a FF and a wet scrubber:

And your HMIWI . . .	Then you are in violation of . . .
(1) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum secondary chamber temperature (3-hour rolling average) simultaneously.	The CO emissions limit.
(2) Operates above the maximum fabric filter inlet temperature (3-hour rolling average), above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), and below the minimum dioxin/furan sorbent flow rate (3-hour rolling average) simultaneously.	The dioxin/furan emissions limit.
(3) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum scrubber liquor pH (3-hour rolling average) simultaneously.	The HCl emissions limit.
(4) Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI) and below the minimum Hg sorbent flow rate (3-hour rolling average) simultaneously.	The Hg emissions limit.
(5) Uses the bypass stack	The PM, dioxin/furan, HCl, Pb, Cd and Hg emissions limits.
(6) Operates above the CO emissions limit as measured by a CO CEMS, as specified in § 62.14452(o)	The CO emissions limit.
(7) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the PM emissions limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The PM emissions limit.[a]
(8) Uses a bag leak detection system, as specified in § 62.14454(e), to demonstrate compliance with the opacity limit and either fails to initiate corrective action within 1 hour of a bag leak detection system alarm or fails to operate and maintain the FF such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period.	The opacity limit.[a]
(9) Operates above the PM emissions limit as measured by a PM CEMS, as specified in § 62.14452(o)	The PM emissions limit.
(10) Operates above the HCl emissions limit as measured by an HCl CEMS, as specified in § 62.14452(o)	The HCl emissions limit.
(11) Operates above the Pb emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Pb emissions limit.
(12) Operates above the Cd emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Cd emissions limit.
(13) Operates above the Hg emissions limit as measured by a multi-metals CEMS, as specified in § 62.14452(o)	The Hg emissions limit
(14) Operates above the dioxin/furan emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(p).	The dioxin/furan emissions limit.
(15) Operates above the Hg emissions limit as measured by a continuous automated sampling system, as specified in § 62.14452(q).	The Hg emissions limit.

[a] If inspection of the FF demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm is counted as a minimum of 1 hour. If it takes longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken to initiate corrective action.

(f) Except as provided in paragraph (g) or (h) of this section, if your HMIWI is equipped with a SNCR system:

And your HMIWI . . .	Then you are in violation of . . .
Operates above the maximum charge rate (3-hour rolling average for continuous and intermittent HMIWI, daily average for batch HMIWI), below the minimum secondary chamber temperature (3-hour rolling average), and below the minimum reagent flow rate (3-hour rolling average) simultaneously.	The NO_X emissions limit.

(g) You may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that your HMIWI is not in violation of the applicable emissions limit(s). You must conduct repeat performance tests pursuant to this paragraph using the identical operating parameters that indicated a violation under paragraph (b), (c), (d), (e), or (f) of this section.

(h) If you are using a CEMS to demonstrate compliance with any of the emissions limits in table 1 of this subpart or § 62.14412, and your CEMS indicates compliance with an emissions limit during periods when operating parameters indicate a violation of an emissions limit under paragraphs (b), (c), (d), (e) or (f) of this section, then you are considered to be in compliance with the emissions limit. You need not conduct a repeat performance test to demonstrate compliance.

26. Section 62.14460 is amended as follows:

a. By redesignating paragraphs (b)(7) through (b)(15) as paragraphs (b)(8) through (b)(16);

b. By revising newly designated paragraph (b)(16);

c. By adding new paragraph (b)(7);

d. By adding paragraphs (b)(17) through (b)(19); and

e. By revising paragraphs (c), (e), and (f).

§ 62.14460 What records must I maintain?

* * * * *

(b) * * *

(7) Amount and type of NO_X reagent used during each hour of operation, as applicable;

* * * * *

(16) All operating parameter data collected, if you are complying by monitoring site-specific operating parameters under § 62.14453(b).

(17) Concentrations of CO, PM, HCl, Pb, Cd, Hg and dioxin/furan, as applicable, as determined by the CEMS or continuous automated sampling system, as applicable.

(18) Records of the annual air pollution control device inspections, any required maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the Administrator.

(19) Records of each bag leak detection system alarm, the time of the alarm, the time corrective action was initiated and completed and a brief description of the cause of the alarm and the corrective action taken, as applicable.

(c) Identification of calendar days for which data on emissions rates or operating parameters specified under paragraph (b)(1) through (17) of this section were not obtained, with an identification of the emissions rates or operating parameters not measured, reasons for not obtaining the data, and a description of corrective actions taken;

* * * * *

(e) Identification of calendar days for which data on emissions rates or operating parameters specified under paragraphs (b)(1) through (17) of this section exceeded the applicable limits, with a description of the exceedances, reasons for such exceedances and a description of corrective actions taken.

(f) The results of the initial, annual and any subsequent performance tests conducted to determine compliance with the emissions limits and/or to establish or re-establish operating parameters, as applicable, including sample calculations, of how the operating parameters were established or re-established, if applicable.

* * * * *

27. Section 62.14463 is amended as follows:

a. By redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (a)(3);

b. By revising newly designated paragraphs (a)(1) and (a)(2);

c. By adding paragraph (a)(4);

d. By redesignating introductory text as paragraph (a) introductory text;

e. By redesignating paragraphs (d) through (k) as paragraphs (a)(5) through (a)(12);

f. By revising newly designated paragraphs (a)(5), (a)(11), and (a)(12);

g. By adding paragraphs (a)(13) through (a)(15); and

h. By adding new paragraph (b).

§ 62.14463 What reporting requirements must I satisfy?

(a) * * *

(1) The initial performance test data as recorded under § 62.14451(a);

(2) The values for the site-specific operating parameters established pursuant to § 62.14453, as applicable, and a description, including sample calculations, of how the operating parameters were established during the initial performance test;

* * * * *

(4) If you use a bag leak detection system, analysis and supporting documentation demonstrating conformance with the EPA guidance and specifications for bag leak detection systems in § 62.14454(e);

(5) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to § 62.14453, as applicable;

* * * * *

(11) Any use of the bypass stack, duration of such use, reason for malfunction and corrective action taken;

(12) Records of the annual equipment inspections, any required maintenance and any repairs not completed within 10 days of an inspection or the time frame established by the EPA Administrator (or delegated enforcement authority);

(13) Records of the annual air pollution control device inspections, any required maintenance and any repairs not completed within 10 days of an inspection or the time frame established by the EPA Administrator (or delegated enforcement authority);

(14) Concentrations of CO, PM, HCl, Pb, Cd, Hg and dioxin/furan, as applicable, as determined by the CEMS or continuous automated sampling system, as applicable; and

(15) Petition for site-specific operating parameters under § 62.14453(b).

(b) If you choose to submit an electronic copy of stack test reports to the EPA's WebFIRE database, as of December 31, 2011, you must enter the test data into the EPA's database using the Electronic Reporting Tool (ERT) located at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

28. Section 62.14464 is amended as follows:

a. By revising paragraph (a);

b. By revising paragraph (b); and

c. By adding paragraph (d).

§ 62.14464 When must I submit reports?

(a) You must submit the information specified in §§ 62.14463(a)(1) through (4) no later than 60 days following the initial performance test.

(b) You must submit an annual report to the EPA Administrator (or delegated enforcement authority) no more than 1 year following the submission of the information in paragraph (a) of this section, and you must submit subsequent reports no more than 1 year following the previous report (once the unit is subject to permitting requirements under Title V of the CAA, you must submit these reports semiannually). The annual report must include the information specified in §§ 62.14463(a)(5) through (14), as applicable.

* * * * *

(d) You must submit your petition for site-specific operating parameters specified in § 62.14463(a)(15) prior to your initial performance test. You may not conduct the initial performance test until the EPA Administrator has approved the petition.

29. Section 62.14470 is amended as follows:

a. By revising paragraph (a) introductory text;

b. By revising paragraphs (a)(1) through (a)(3);

c. By revising paragraph (b) introductory text;

d. By revising paragraph (b)(1);

e. By revising paragraphs (b)(2)(i) through (b)(2)(v); and

f. By revising paragraph (b)(3).

§ 62.14470 When must I comply with this subpart if I plan to continue operation of my HMIWI?

* * * * *

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by [date 1 year after publication of final rule], then you must complete the requirements of paragraphs (a)(1) through (a)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

(2) You must achieve final compliance by [date 1 year after publication of final rule]. This includes incorporating all process changes and/or completing retrofit construction, connecting the air pollution control equipment or process changes such that the HMIWI is brought online, and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14451(a) within 180 days after the date when you are required to achieve final compliance under paragraph (a)(2) of this section.

* * * * *

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after [date 1 year after publication of final rule], but before October 6, 2014, then you must complete the requirements of paragraphs (b)(1) through (b)(4) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

(2) * * *

(i) You must submit a final control plan by October 6, 2012. Your final control plan must, at a minimum, include a description of the air pollution control device(s) or process changes that will be employed for each unit to comply with the emissions limits and other requirements of this subpart.

(ii) You must award contract(s) for on-site construction, on-site installation of emissions control equipment or incorporation of process changes by May 6, 2013. You must submit a signed copy of the contract(s) awarded.

(iii) You must begin on-site construction, begin on-site installation of emissions control equipment or begin process changes needed to meet the emissions limits as outlined in the final control plan by January 6, 2014.

(iv) You must complete on-site construction, installation of emissions control equipment or process changes by August 6, 2014.

(v) You must achieve final compliance by October 6, 2014. This includes incorporating all process changes and/or completing retrofit construction as described in the final control plan, connecting the air pollution control equipment or process changes such that the HMIWI is brought online and ensuring that all necessary process changes and air pollution control equipment are operating properly.

(3) You must conduct the initial performance test required by § 62.14451(a) within 180 days after the date when you are required to achieve final compliance under paragraph (b)(2)(v) of this section.

* * * * *

30. Section 62.14471 is amended as follows:

a. By revising paragraph (a);

b. By revising paragraph (b) introductory text;

c. By revising paragraphs (b)(1) and (b)(1)(i); and

d. By revising paragraphs (b)(2) and (b)(3).

§ 62.14471 When must I comply with this subpart if I plan to shutdown?

* * * * *

(a) If you plan to shutdown by [date 1 year after publication of final rule], rather that come into compliance with the requirements of this subpart, then you must shutdown by [date 1 year after publication of final rule], to avoid coverage under any of the requirements of this subpart.

(b) If you plan to shutdown rather than come into compliance with the requirements of this subpart but are unable to shutdown by [date 1 year after publication of final rule], then you may petition the EPA for an extension by following the procedures outlined in paragraphs (b)(1) through (b)(3) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by [date 90 days after publication of final rule]. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shutdown while [date 1 year after publication of final rule], does not provide sufficient time for shutdown. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

* * * * *

(2) You must shutdown no later than October 6, 2014.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by [date 1 year after publication of final rule].

31. Section 62.14472 is amended as follows:

a. By revising paragraph (a) introductory text;

b. By revising paragraph (b) introductory text;

c. By revising paragraphs (b)(1) and (b)(4);

d. By revising paragraph (c) introductory text; and

e. By revising paragraph (c)(1).

§ 62.14472 When must I comply with this subpart if I plan to shutdown and later restart?

* * * * *

(a) If you plan to shutdown and restart prior to October 6, 2014, then you must:

(1) Meet the compliance schedule outlined in § 63.14470(a) if you restart prior to [date 1 year after publication of final rule]; or

(2) Meet the compliance schedule outlined in § 62.14470(b) if you restart after [date 1 year after publication of final rule]. Any missed increments of progress need to be completed prior to or upon the date of restart.

(b) If you plan to shutdown by [date 1 year after publication of final rule], and restart after October 6, 2014, then you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must shutdown by [date 1 year after publication of final rule].

* * * * *

(4) You must conduct the initial performance test required by § 62.14451(a) within 180 days after the date when you restart.

* * * * *

(c) If you plan to shutdown after [date 1 year after publication of final rule], and restart after October 6, 2014, then you must complete the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) You must petition the EPA for an extension by following the procedures outlined in § 63.14471(b)(1) through (b)(3).

* * * * *

32. Section 62.14490 is amended as follows:

a. By adding a definition for ''Bag leak detection system'';

b. By adding a definition for ''Commercial HMIWI'';

c. By revising the definition for ''Maximum design waste burning capacity'';

d. By adding a definition for ''Minimum reagent flow rate'';

e. By revising the definition for ''Minimum secondary chamber temperature''; and

f. By revising the introductory text to the definition for ''Modification'' or ''Modified HMIWI.''

§ 62.14490 Definitions.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a FF in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance or other effects to monitor relative PM loadings.

* * * * *

Commercial HMIWI means a HMIWI which offers incineration services for hospital/medical/infectious waste generated offsite by firms unrelated to the firm that owns the HMIWI.

* * * * *

Maximum design waste burning capacity means:

(1) For intermittent and continuous HMIWI,

$C = P_v \times 15{,}000/8{,}500$ (Eq. 2)

Where:

C = HMIWI capacity, lb/hr

P_V = primary chamber volume, ft^3

15,000 = primary chamber heat release rate factor, Btu/ft^3/hr

8,500 = standard waste heating value, Btu/lb;

(2) For batch HMIWI,

$C = P_v \times 4.5/8$ (Eq. 3)

Where:

C = HMIWI capacity, lb/hr

P_V = primary chamber volume, ft^3

4.5 = waste density, lb/ft^3

8 = typical hours of operation of a batch HMIWI, hours.

* * * * *

Minimum reagent flow rate means 90 percent of the highest 3-hour average reagent flow rate at the inlet to the SNCR technology (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the NO_X emissions limit.

* * * * *

Minimum secondary chamber temperature means 90 percent of the highest 3-hour average secondary chamber temperature (taken, at a minimum, once every minute) measured during the most recent performance test demonstrating compliance with the PM, CO, dioxin/furan or NO_X emissions limits.

Modification or Modified HMIWI means any change to a HMIWI unit after April 6, 2010, such that:

* * * * *

33. Section 62.14495 is amended as follows:

a. By revising paragraph (b);

b. By adding paragraph (c);

c. By adding paragraph (d); and

d. By adding paragraph (e).

§ 62.14495 What authorities will be retained by the EPA Administrator?

* * * * *

(b) Approval of alternative methods of demonstrating compliance under 40 CFR 60.8, including:

(1) Approval of CEMS for PM, HCl, multi-metals and Hg where used for purposes of demonstrating compliance,

(2) Approval of continuous automated sampling systems for dioxin/furan and Hg where used for purposes of demonstrating compliance, and

(3) Approval of major alternatives to test methods;

(c) Approval of major alternatives to monitoring;

(d) Waiver of recordkeeping requirements; and

(e) Performance test and data reduction waivers under 40 CFR 60.8(b).

33. Table 1 to Subpart HHH is revised to read as follows:

TABLE 1 TO SUBPART HHH OF PART 62—EMISSIONS LIMITS FOR SMALL RURAL, SMALL, MEDIUM AND LARGE HMIWI

For the air pollutant	You must meet this emissions limit				With these units (7 percent oxygen, dry basis)	Using this averaging time [a]	And determining compliance using this method [b]
	HMIWI size						
	Small rural	Small	Medium	Large			
Particulate matter	87 (0.038)	66 (0.029)	46 (0.020) [c] 34 (0.015) [d]	25 (0.011)	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method M 26A or 29 of appendix A–8 of part 60.
Carbon monoxide	20	20	5.5	11	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 10 or 10B of appendix A–4 of part 60.
Dioxins/furans	240 (100) or 5.1 (2.2)	16 (7.0) or 0.013 (0.0057).	0.85 (0.37) or 0.020 (0.0087).	9.3 (4.1) or 0.054 (0.024).	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet).	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A–7 of part 60.
Hydrogen chloride	810	44 [c], 15 [d]	7.7	6.6	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A–8 of part 60.
Sulfur dioxide	55	4.2	4.2	9.0	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A–4 of part 60.
Nitrogen oxides	130	190	190	140	Parts per million by volume.	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A–4 of part 60.

TABLE 1 TO SUBPART HHH OF PART 62—EMISSIONS LIMITS FOR SMALL RURAL, SMALL, MEDIUM AND LARGE HMIWI—Continued

For the air pollutant	You must meet this emissions limit				With these units (7 percent oxygen, dry basis)	Using this averaging time [a]	And determining compliance using this method [b]
	HMIWI size						
	Small rural	Small	Medium	Large			
Lead	0.50 (0.22)	0.31 (0.14)	0.018 (0.0079).	0.036 (0.016).	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Cadmium	0.11 (0.048)	0.017 (0.0074).	0.013 (0.0057).	0.0092 (0.0040).	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Mercury	0.051 (0.0022).	0.014 (0.0061).	0.025 (0.011).	0.018 (0.0079).	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

[a] Except as allowed under §§ 62.14452(o)–(q) for HMIWI equipped with CEMS or continuous automated sampling systems.
[b] Does not include CEMS, continuous automated sampling systems, and approved alternative non-EPA test methods allowed under § 62.14452(d) and (m).
[c] Limits for those HMIWI for which construction or modification was commenced according to § 62.14400(a)(2)(i).
[d] Limits for those HMIWI for which construction or modification was commenced according to § 62.14400(a)(2)(ii).

34. Table 2 to Subpart HHH is revised to read as follows:

TABLE 2 TO SUBPART HHH OF PART 62—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	1
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
Octachlorinated dibenzo-p-dioxin	0.0003
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.3
1,2,3,7,8-pentachlorinated dibenzofuran	0.03
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Octachlorinated dibenzofuran	0.0003

35. Table 3 to Subpart HHH is revised to read as follows:

TABLE 3 TO SUBPART HHH OF PART 62—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES

Operating parameters to be monitored	Minimum frequency		HMIWI				
	Data measurement	Data recording	HMIWI with combustion control only	HMIWI with dry scrubber followed by FF	HMIWI with wet scrubber	HMIWI with dry scrubber followed by FF and wet scrubber	HMIWI with SNCR system
Maximum operating parameters:							
Maximum charge rate	Once per charge	Once per charge	✓	✓	✓	✓	✓
Maximum FF inlet temperature	Continuous	Once per minute		✓		✓	
Maximum flue gas temperature	Continuous	Once per minute			✓	✓	
Minimum operating parameters:							

TABLE 3 TO SUBPART HHH OF PART 62—OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES—Continued

Operating parameters to be monitored	Minimum frequency		HMIWI				
	Data measurement	Data recording	HMIWI with combustion control only	HMIWI with dry scrubber followed by FF	HMIWI with wet scrubber	HMIWI with dry scrubber followed by FF and wet scrubber	HMIWI with SNCR system
Minimum secondary chamber temperature.	Continuous	Once per minute	✓	✓	✓	✓	✓
Minimum dioxin/furan sorbent flow rate.	Hourly	Once per hour		✓		✓	
Minimum HCl sorbent flow rate	Hourly	Once per hour		✓		✓	
Minimum mercury (Hg) sorbent flow rate.	Hourly	Once per hour		✓		✓	
Minimum pressure drop across the wet scrubber or minimum horsepower or amperage to wet scrubber.	Continuous	Once per minute			✓	✓	
Minimum scrubber liquor flow rate.	Continuous	Once per minute			✓	✓	
Minimum scrubber liquor pH	Continuous	Once per minute			✓	✓	
Minimum reagent flow rate	Hourly	Once per hour					✓

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Part III

Federal Communications Commission

47 CFR Part 76

Revision of the Commission's Program Access Rules; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 12–68, 07–18, and 05–192; FCC 12–30]

Revision of the Commission's Program Access Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to retain, sunset, or relax one of the several protections afforded to multichannel video programming distributors by the program access rules—the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming. The current exclusive contract prohibition is scheduled to expire on October 5, 2012. The Commission also seeks comment on potential revisions to its program access rules to better address alleged violations, including potentially discriminatory volume discounts and uniform price increases.

DATES: Comments are due on or before June 22, 2012; reply comments are due on or before July 23, 2012. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 22, 2012.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 12–68, 07–18, and 05–192 by any of the following methods:

- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *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.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167. 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: For additional information, contact David Konczal, *David.Konczal@fcc.gov,* or Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: This is a summary of document FCC 12–30, adopted and released on March 20, 2012. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document contains proposed information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due June 22, 2012.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0888.

Title: Section 1.221, Notice of hearing; appearances; Section 1.229, Motions to enlarge, change, or delete issues; Section 1.248, Prehearing conferences; hearing conferences; Section 76.7, Petition Procedures; Section 76.9, Confidentiality of Proprietary Information; Section 76.61, Dispute Concerning Carriage; Section 76.914, Revocation of Certification; Section 76.1001, Unfair Practices; Section 76.1002, Specific Unfair Practices Prohibited; Section 76.1003, Program Access Proceedings; Section 76.1302, Carriage Agreement Proceedings; Section 76.1513, Open Video Dispute Resolution.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; not-for-profit institutions.

Number of Respondents and Responses: 828 respondents; 828 responses.

Estimated Time per Response: 6.8 to 98 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 4(i), 303(r), 616, and 628 of the Communications Act of 1934, as amended.

Total Annual Burden: 43,387 hours.

Total Annual Costs: $4,719,600.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in § 76.7 and use the method described in §§ 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Needs and Uses: On March 20, 2012, the Commission adopted a Notice of Proposed Rulemaking (''NPRM''), *Revision of the Commission's Program Access Rules,* MB Docket No. 12–68, FCC 12–30. In the NPRM, the Commission seeks comment on (i) whether to retain, sunset, or relax the prohibition on exclusive contracts between cable operators and satellite-delivered, cable-affiliated programming vendors; and (ii) potential revisions to the program access rules to better address alleged violations, including potentially discriminatory volume discounts and uniform price increases.

The NPRM proposes to add or revise the following rule sections, which contain proposed information collection requirements: 47 CFR 76.1002(c)(5), 47 CFR 76.1002(c)(7), 76.1003(e)(1).

If adopted, 47 CFR 76.1002(c)(5) would provide that, to the extent the exclusive contract prohibition sunsets or is relaxed, a cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a ''Petition for Exclusivity'' to the Commission and receive approval from the Commission to preclude the filing of complaints alleging that an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, with respect to areas served by a cable operator violates Section 628(b) of the Communications Act of 1934, as amended, and Section 76.1001(a) of the Commission's Rules, or Section 628(c)(2)(B) of the Communications Act of 1934, as amended, and Section 76.1002(b) of the Commission's Rules. The proposed rule specifies the requirements for the petition for exclusivity, provides that a competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, and provides that the petitioner may file a response within ten (10) days of receipt of any formal opposition.

If adopted, 47 CFR 76.1002(c)(7) would provide that, to the extent the exclusive contract prohibition is relaxed, a cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to remove the prohibition on exclusive contracts and practices, activities or arrangements tantamount to an exclusive contract set forth in Section 76.1002(c)(2) of the Commission's Rules may submit a ''Petition for Sunset'' to the Commission. If the Commission finds that the prohibition is not necessary to preserve and protect competition and diversity in the distribution of video programming, then the prohibition set forth in Section 76.1002(c)(2) of the Commission's Rules shall no longer apply in the geographic area specified in the decision of the Commission. The proposed rule specifies the requirements for the petition for sunset, provides that a competing multichannel video programming distributor or other interested party affected by the petition for sunset may file an opposition to the petition within forty-five (45) days of the date on which the petition is placed on public notice, and provides that the petitioner may file a response within fifteen (15) days of receipt of any formal opposition.

If adopted, 47 CFR 76.1003(e)(1) would provide that a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor upon which a program access complaint is served shall answer within forty-five (45) days of service of the complaint if the complaint alleges a violation of Section 628(b) of the Communications Act of 1934, as amended, or Section 76.1001(a) of the Commission's rules. In addition, to the extent the exclusive contract prohibition sunsets or is relaxed, an increase in the number of complaints alleging a violation of Section 628(b) of the Communications Act of 1934, as amended, or Section 76.1001(a) of the Commission's rules is expected.

The Commission is seeking OMB approval for the proposed information collection requirements. All other remaining existing information collection requirements would stay as they are, and the various burden estimates would be revised to reflect the new and revised rules noted above.

Summary of the Notice of Proposed Rulemaking

I. Introduction

We issue this Notice of Proposed Rulemaking (''*NPRM*'') to seek comment on (i) whether to retain, sunset, or relax one of the several protections afforded to multichannel video programming distributors (''MVPDs'') by the program access rules—the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming; and (ii) potential revisions to our program access rules to better address alleged violations, including potentially discriminatory volume discounts and uniform price increases. This *NPRM* promotes the goals of Executive Order 13579 and the Commission's plan adopted thereto, whereby the Commission analyzes rules that may be outmoded, ineffective, insufficient, or excessively burdensome and determines whether any such regulations should be modified, streamlined, expanded, or repealed.

2. In areas served by a cable operator, Section 628(c)(2)(D) of the Communications Act of 1934, as amended (the ''Act''), generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between any cable operator and any cable-affiliated programming vendor (the ''exclusive contract prohibition'').[1] The exclusive contract prohibition applies to all satellite-delivered, cable-affiliated programming and presumes that an exclusive contract will cause competitive harm in every case, regardless of the type of programming at issue. The exclusive contract prohibition applies only to programming which is delivered via satellite; it does not apply to programming which is delivered via

[1] *See* 47 U.S.C. 548(c)(2)(D). An exclusive contract for satellite cable programming or satellite broadcast programming between a cable operator and a cable-affiliated programming vendor that provides satellite-delivered programming would violate Section 628(c)(2)(D) even if the cable operator that is a party to the contract is not affiliated with the cable-affiliated programming vendor that is a party to the contract. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition,* Report and Order, 22 FCC Rcd 17791, 17840–41, paras. 70–72 (2007) (''*2007 Extension Order*''), *aff'd sub nom. Cablevision Sys. Corp. et al.* v. *FCC,* 597 F.3d 1306, 1314–15 (D.C. Cir. 2010) (''*Cablevision I*''); *see also Cable Horizontal and Vertical Ownership Limits,* Further Notice of Proposed Rulemaking, 23 FCC Rcd 2134, 2195–96, para. 145 (2008).

terrestrial facilities.[2] In January 2010, the Commission adopted rules providing for the processing of complaints alleging that an ''unfair act'' involving terrestrially delivered, cable-affiliated programming violates Section 628(b) of the Act. Thus, while an exclusive contract involving satellite-delivered, cable-affiliated programming is generally prohibited, an exclusive contract involving terrestrially delivered, cable-affiliated programming is permitted unless the Commission finds in response to a complaint that it violates Section 628(b) of the Act.

3. In Section 628(c)(5) of the Act, Congress provided that the exclusive contract prohibition would cease to be effective on October 5, 2002, unless the Commission found that it ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' In June 2002, the Commission found that the exclusive contract prohibition continued to be necessary to preserve and protect competition and diversity and retained the exclusive contract prohibition for five years, until October 5, 2007. The Commission provided that, during the year before the expiration of the five-year extension, it would conduct a second review to determine whether the exclusive contract prohibition continued to be necessary to preserve and protect competition and diversity in the distribution of video programming. After conducting such a review, the Commission in September 2007 concluded that the exclusive contract prohibition was still necessary, and it retained the prohibition for five more years, until October 5, 2012. The Commission again provided that, during the year before the expiration of the five-year extension, it would conduct a third review to determine whether the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

4. Accordingly, in this *NPRM,* we initiate the third review of the necessity of the exclusive contract prohibition. Below, we present certain data on the current state of competition in the video distribution market and the video programming market, and we invite commenters to submit more recent data or empirical analyses. We seek comment on whether current conditions in the video marketplace support retaining, sunsetting, or relaxing the exclusive contract prohibition. To the extent that the data do not support retaining the exclusive contract prohibition as it exists today, we seek comment on whether we can preserve and protect competition in the video distribution market by either:

- Sunsetting the exclusive contract prohibition in its entirety and instead relying solely on existing protections provided by the program access rules that will not sunset: (i) The case-by-case consideration of exclusive contracts pursuant to Section 628(b) of the Act; (ii) the prohibition on discrimination in Section 628(c)(2)(B) of the Act; and (iii) the prohibition on undue or improper influence in Section 628(c)(2)(A) of the Act; or
- Relaxing the exclusive contract prohibition by (i) establishing a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can seek to remove the prohibition on a market-by-market basis based on the extent of competition in the market; (ii) retaining the prohibition only for satellite-delivered, cable-affiliated Regional Sports Networks (''RSNs'') and any other satellite-delivered, cable-affiliated programming that the record here establishes as being important for competition and non-replicable and having no good substitutes; and/or (iii) other ways commenters propose.

We seek comment also on (i) how to implement a sunset (complete or partial) to minimize any potential disruption to consumers; (ii) the First Amendment implications of the alternatives discussed herein; (iii) the costs and benefits of the alternatives discussed herein; and (iv) the impact of a sunset on existing merger conditions.

5. In addition, we seek comment below on potential improvements to the program access rules to better address potential violations. With the exception of certain procedural revisions and the previous extensions of the exclusive contract prohibition, the program access rules have remained largely unchanged in the almost two decades since the Commission originally adopted them in 1993. We seek comment on, among other things, whether our rules adequately address potentially discriminatory volume discounts and uniform price increases and, if not, how these rules should be revised to address these concerns.

II. Background

A. Program Access Protections

6. Congress adopted the program access provisions as part of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). Congress was concerned that, in order to compete effectively, new market entrants would need access to satellite-delivered, cable-affiliated programming. At that time, Congress found that increased horizontal concentration of cable operators and extensive vertical integration[3] created an imbalance of power, both between cable operators and program vendors and between incumbent cable operators and their multichannel competitors. As a result of this imbalance of power, Congress determined that the development of competition among MVPDs was limited and consumer choice was restricted. Congress concluded that cable-affiliated programmers had the incentive and ability to favor their affiliated cable operators over other, unaffiliated, MVPDs with the effect that competition and diversity in the distribution of video programming would not be preserved and protected.

7. The program access provisions afford several protections to MVPDs in their efforts to compete in the video distribution market. Sections 628(b), 628(c)(1), and 628(d) of the Act grant the Commission broad authority to prohibit ''unfair acts'' of cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, and satellite broadcast programming vendors that have the ''purpose or effect'' of ''hinder[ing] significantly or prevent[ing]'' any MVPD from providing ''satellite cable programming or satellite broadcast programming to subscribers or consumers.''[4] In addition to this broad grant of authority, Congress in Section 628(c)(2) of the Act required the Commission to adopt specific regulations to specify particular conduct that is prohibited by Section 628(b), i.e., certain unfair acts involving satellite-delivered, cable-affiliated programming. In contrast to Section 628(b), the unfair acts listed in Section 628(c)(2) pertaining to satellite-delivered programming are presumed to harm competition in every case, and MVPDs alleging such unfair acts are not required to demonstrate harm. First, Section 628(c)(2)(A) requires the Commission to prohibit efforts by cable operators to unduly influence the decision of cable-affiliated programming vendors that provide satellite-delivered programming to sell their programming to competitors (''undue influence'').

[2] In this *NPRM,* we refer to ''satellite cable programming'' and ''satellite broadcast programming'' collectively as ''satellite-delivered programming.''

[3] Vertical integration means the combined ownership of cable systems and suppliers of cable programming.

[4] Throughout this *NPRM,* we use the term ''unfair act'' as shorthand for the phrase ''unfair methods of competition or unfair or deceptive acts or practices.'' 47 U.S.C. 548(b); *see* 47 CFR 76.1001.

Second, Section 628(c)(2)(B) requires the Commission to prohibit discrimination among MVPDs by cable-affiliated programming vendors that provide satellite-delivered programming in the prices, terms, and conditions for sale of programming (''discrimination''). Third, Sections 628(c)(2)(C)–(D) require the Commission to prohibit exclusive contracts between cable operators and cable-affiliated programming vendors that provide satellite-delivered programming, subject to certain exceptions. In this proceeding, our focus is on the protection provided under Section 628(c)(2)(D), although we discuss the other statutory protections to the extent they bear on our consideration of whether to allow the exclusive contract provision to sunset.

B. Enactment of the Exclusive Contract Prohibition With a Sunset Provision

8. In the 1992 Cable Act, Congress drew a distinction between exclusive contracts for satellite-delivered, cable-affiliated programming in areas not served by a cable operator as of October 5, 1992 (''unserved areas'') and areas served by a cable operator as of that date (''served areas''). In unserved areas, Congress adopted a per se prohibition on exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers. In served areas, however, the prohibition on exclusive contracts is not absolute; rather, an exclusive contract is permissible if the Commission determines that it ''is in the public interest.'' Congress thus recognized that, in served areas, some exclusive contracts may serve the public interest by providing offsetting benefits to the video programming market or assisting in the development of competition among MVPDs. To enforce or enter into an exclusive contract in a served area, a cable operator or a satellite-delivered, cable-affiliated programmer must submit a ''Petition for Exclusivity'' to the Commission for approval.[5]

9. In addition to this prior approval process, Congress also recognized that exclusivity can be a legitimate business practice where there is sufficient competition. Accordingly, in Section 628(c)(5), Congress provided that the exclusive contract prohibition in served areas:

> Shall cease to be effective 10 years after the date of enactment of this section, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

The 1992 Cable Act was enacted on October 5, 1992. Accordingly, the ''sunset provision'' of Section 628(c)(5) would have triggered the expiration of the exclusive contract prohibition on October 5, 2002, absent a Commission finding that the prohibition remained necessary to preserve and protect competition and diversity in the distribution of video programming.

C. 2002 Extension of the Exclusive Contract Prohibition

10. In October 2001, approximately a year before the initial expiration of the exclusive contract prohibition, the Commission sought comment on whether the exclusive contract prohibition remained necessary to preserve and protect competition and diversity in the distribution of video programming. Ultimately, the Commission concluded that the prohibition remained ''necessary.'' The Commission explained that, based on marketplace conditions at the time, cable-affiliated programmers retained the incentive and ability to withhold programming from unaffiliated MVPDs with the effect that competition and diversity in the distribution of video programming would be impaired without the prohibition. The Commission found as follows:

> The competitive landscape of the market for the distribution of multichannel video programming has changed for the better since 1992. The number of MVPDs that compete with cable and the number of subscribers served by those MVPDs have increased significantly. We find, however, that the concern on which Congress based the program access provisions—that in the absence of regulation, vertically integrated programmers have the ability and incentive to favor affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies such that competition and diversity in the distribution of video programming would not be preserved and protected—persists in the current marketplace.

11. Accordingly, the Commission extended the exclusive contract prohibition for five years (i.e., through October 5, 2007). The Commission provided that, during the year before the expiration of the five-year extension of the exclusive contract prohibition, it would conduct another review to determine whether the exclusive contract prohibition continued to be necessary to preserve and protect competition and diversity in distribution of video programming.

D. 2007 Extension of the Exclusive Contract Prohibition and D.C. Circuit Decision

12. In February 2007, the Commission again sought comment on whether the prohibition remained necessary to preserve and protect competition and diversity in the distribution of video programming. For a second time, the Commission concluded that the prohibition remained ''necessary.''

13. The Commission conducted its analysis of the exclusive contract prohibition in five parts. First, in considering the applicable standard of review, the Commission determined that it may use its predictive judgment, economic theory, and specific factual evidence in determining whether, ''in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.'' If such an inquiry is answered in the affirmative, then the Commission concluded that it must extend the exclusive contract prohibition. Second, the Commission examined the changes that had occurred in the video programming and distribution markets since 2002, and it found that, while there had been some procompetitive trends, the concerns on which Congress based the program access provisions persisted in the marketplace. Third, the Commission examined the incentive and ability of cable-affiliated programmers to favor their affiliated cable operators over competitive MVPDs with the effect that competition and diversity in the distribution of video programming would not be preserved and protected.[6] The Commission determined that this incentive and ability existed with the effect that the exclusive contract prohibition remained necessary to preserve and protect

[5] *See* 47 CFR 76.1002(c)(5). Ten Petitions for Exclusivity have been filed since enactment of the 1992 Cable Act. Of these petitions, two were granted, three were denied, and five were dismissed at the request of the parties. *See New England Cable News Channel,* Memorandum Opinion and Order, 9 FCC Rcd 3231 (1994) (granting exclusivity petition); *Time Warner Cable,* Memorandum Opinion and Order, 9 FCC Rcd 3221 (1994) (denying exclusivity petition for Courtroom Television (''Court TV'')); *Outdoor Life Network and Speedvision Network,* Memorandum Opinion and Order, 13 FCC Rcd 12226 (CSB 1998) (denying exclusivity petition for the Outdoor Life Network (''OLN'') and Speedvision Network (''Speedvision'')); *Cablevision Industries Corp. and Sci-Fi Channel,* Memorandum Opinion and Order, 10 FCC Rcd 9786 (CSB 1995) (denying exclusivity petition for the Sci-Fi Channel); *NewsChannel,* Memorandum Opinion and Order, 10 FCC Rcd 691 (CSB 1994) (granting exclusivity petition).

[6] For purposes of this *NPRM,* the term ''competitive MVPD'' refers to MVPDs that compete with incumbent cable operators in the video distribution market, such as DBS operators and wireline video providers.

competition and diversity in the distribution of video programming. The Commission recognized, however, ''that Congress intended for the exclusive contract prohibition to sunset at a point when market conditions warrant'' and specifically ''caution[ed] competitive MVPDs to take any steps they deem appropriate to prepare for the eventual sunset of the prohibition, including further investments in their own programming.'' Fourth, the Commission considered commenters' arguments that the exclusive contract prohibition is both overinclusive and underinclusive with respect to the types of programming and MVPDs it covers, and the Commission declined either to narrow or broaden the prohibition. Fifth, the Commission considered the appropriate length of time for an extension of the exclusive contract prohibition, and it again concluded that the prohibition should be extended for five years.

14. Accordingly, the Commission extended the exclusive contract prohibition for five years (i.e., until October 5, 2012). As in 2002, the Commission provided that, during the year before the expiration of the five-year extension of the exclusive contract prohibition (i.e., between October 2011 and October 2012), it would conduct a third review to determine whether the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

15. Cablevision Systems Corporation (''Cablevision'') and Comcast Corporation (''Comcast'') (Cablevision and Comcast, collectively, the ''Petitioners'') filed petitions for review of the *2007 Extension Order* with the D.C. Circuit. The D.C. Circuit addressed Petitioners' objections to three conclusions that the Commission reached in the *2007 Extension Order.* First, Petitioners objected to the Commission's interpretation of the term ''necessary'' as used in the sunset provision as requiring the exclusive contract prohibition to continue ''if, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.'' The D.C. Circuit found that the term ''necessary'' is ''not language of plain meaning'' and that the Commission's interpretation was ''well within the Commission's discretion'' under *Chevron.* Second, Petitioners contended that ''the Commission did not rely on substantial evidence when it concluded that vertically integrated cable companies would enter into competition-harming exclusive contracts if the exclusivity prohibition were allowed to lapse.'' The D.C. Circuit disagreed, finding that the Commission relied on substantial evidence and stating that ''conclusions based on [the Commission's] predictive judgment and technical analysis are just the type of conclusions that warrant deference from this Court.'' While there had been substantial changes in the MVPD market since 1992, the court described the transformation as a ''mixed picture'' and deferred to the Commission's analysis, which concluded that vertically integrated cable companies retained a substantial ability and incentive to withhold ''must have'' programming. Finally, Petitioners objected to the Commission's failure to narrow the exclusive contract prohibition to apply only to certain types of cable companies or certain types of programming. The D.C. Circuit found that the Commission's decision to refrain from narrowing the exclusive contract prohibition was not arbitrary and capricious, but rather was a reasonable decision ''to adhere to Congress's statutory design.''

16. While the D.C. Circuit affirmed the *2007 Extension Order,* it also provided some comment on the Commission's subsequent review of the exclusive contract prohibition. Specifically, the D.C. Circuit stated as follows:

> We anticipate that cable's dominance in the MVPD market will have diminished still more by the time the Commission next reviews the prohibition, and expect that at that time the Commission will weigh heavily Congress's intention that the exclusive contract prohibition will eventually sunset. Petitioners are correct in pointing out that the MVPD market has changed drastically since 1992. We expect that if the market continues to evolve at such a rapid pace, the Commission will soon be able to conclude that the [exclusive contract] prohibition is no longer necessary to preserve and protect competition and diversity in the distribution of video programming.

E. TWC/Time Warner and Comcast/NBCU Transactions

17. Since the *2007 Extension Order,* two transactions have had a particular impact on the video distribution market and the video programming market: (i) The separation of Time Warner Cable Inc. (''TWC''; a cable operator) from Time Warner Inc. (''Time Warner''; an owner of satellite-delivered, national programming networks);[7] and (ii) the joint venture between Comcast (a vertically integrated cable operator) and NBC Universal, Inc. (''NBCU''; an owner of broadcast stations and satellite-delivered, national programming networks).[8]

18. In the *Time Warner Order,* the Media, Wireline Competition, Wireless Telecommunications, and International Bureaus (the ''Bureaus'') granted the applications for the assignment and transfer of control of certain Commission licenses and authorizations from Time Warner to TWC. Before the transaction, Time Warner controlled TWC, but after their separation, Time Warner no longer has an ownership interest in TWC or its subsidiary licensees. As a result of the transaction, Time Warner's programming networks are no longer affiliated with TWC, thus reducing the number of satellite-delivered, national programming networks that are cable-affiliated. The Bureaus found that the transaction would benefit the public interest by lessening the extent to which TWC is vertically integrated and by eliminating Time Warner's vertical integration. In declining to adopt a condition applying the program access rules to Time Warner post-transaction, the Commission explained that the underlying premise of the program access rules would no longer apply because Time Warner and TWC would no longer have the incentive and ability to discriminate in favor of each other. If an MVPD believed that Time Warner or TWC violated the program access rules while they were vertically integrated, however, the Commission stated that the program access complaint process would provide an avenue for relief.

19. In contrast, another recent transaction has led to an increased number of satellite-delivered, national programming networks that are cable-affiliated. In the *Comcast/NBCU Order,* the Commission granted the application of Comcast, General Electric Company (''GE''), and NBCU to assign and transfer control of broadcast, satellite, and other radio licenses from GE to Comcast. The transaction created a joint venture (''Comcast-NBCU'') combining NBCU's broadcast, cable programming, online content, movie studio, and other businesses with some of Comcast's cable programming and online content businesses. Before the transaction, both Comcast and NBCU either wholly or partly owned a number of satellite-

[7] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Time Warner Inc., Assignor/Transferor, and Time Warner Cable Inc., Assignee/Transferee,* Memorandum Opinion and Order, 24 FCC Rcd 879 (MB, WCB, WTB, IB, 2009) (''*Time Warner Order*'').

[8] *See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees,* Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011) (''*Comcast/NBCU Order*'').

delivered, national programming networks. As a result of the transaction, programming networks that were previously affiliated with NBCU became affiliated with the joint venture, thus increasing the number of satellite-delivered, national programming networks that are cable-affiliated.

20. In evaluating post-transaction MVPD access to Comcast-NBCU programming, the Commission concluded that the transaction ''creates the possibility that Comcast-NBCU, either temporarily or permanently, will block Comcast's video distribution rivals from access to the video programming content the [joint venture] would come to control or raise programming costs to its video distribution rivals.'' The Commission found the joint venture would ''have the power to implement an exclusionary strategy,'' and that ''successful exclusion * * * of video distribution rivals would likely harm competition by allowing Comcast to obtain or (to the extent it may already possess it) maintain market power.'' Additionally, the Commission concluded that an ''anticompetitive exclusionary program access strategy would often be profitable for Comcast.'' Accordingly, the Commission imposed conditions designed to ameliorate the potential harms, including a baseball-style arbitration condition that allows an aggrieved MVPD to submit a dispute with Comcast-NBCU over the terms and conditions of carriage of programming to commercial arbitration.

III. Discussion

A. Exclusive Contract Prohibition

21. We seek comment on whether to retain, sunset, or relax the exclusive contract prohibition.[9] Our discussion of this issue below proceeds in ten main parts. First, we present relevant data for assessing whether to retain, sunset, or relax the exclusive contract prohibition, and we invite commenters to submit more recent data or empirical analyses. Second, we ask commenters to assess whether these data, as updated and supplemented by commenters, support either retaining, sunsetting, or relaxing the exclusive contract prohibition. Third, we seek comment on how each of these three options (i.e., retaining, sunsetting, or relaxing the exclusive contract prohibition) will impact the creation of new national, regional, and local programming. Fourth, to the extent that the data do not support retaining the exclusive contract prohibition as it exists today, we seek comment on whether we can nonetheless preserve and protect competition in the video distribution market by either (i) sunsetting the prohibition in its entirety and relying solely on existing protections provided by the program access rules that will not sunset; or (ii) relaxing the exclusive contract prohibition, such as through removal of the prohibition on a market-by-market basis based on the extent of competition in the market or by retaining the prohibition only for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming. Fifth, we seek input on how a sunset (complete or partial) of the exclusive contract prohibition will impact consumers, and how to implement a sunset to minimize any potential disruption to consumers. Sixth, we ask commenters to assess whether and how each of the three options comports with the First Amendment. Seventh, we ask commenters to consider the costs and benefits associated with each of the three options. Eighth, to the extent the exclusive contract prohibition sunsets (wholly or partially), we propose to eliminate existing restrictions on exclusive subdistribution agreements between cable operators and satellite-delivered, cable-affiliated programmers. Ninth, we propose that any amendments we adopt herein to our rules pertaining to exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers in served areas will apply equally to existing rules pertaining to exclusive contracts involving common carriers and Open Video Systems (''OVS'') in served areas. Finally, we seek comment on how conditions adopted in previous merger orders may be impacted if the exclusive contract prohibition were to sunset (wholly or partially).

1. Relevant Data in Considering a Sunset of the Exclusive Contract Prohibition

22. In evaluating whether the exclusive contract prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming,'' the Commission has previously examined data on the status of competition in the video programming market and the video distribution market. Specifically, in the *2007 Extension Order,* the Commission examined ''the changes that [had] occurred in the programming and distribution markets since 2002 when the Commission last reviewed whether the exclusive contract prohibition continued to be necessary to preserve and protect competition.'' The Commission examined data relating to (i) the number of MVPD subscribers nationwide and in regional markets attributable to each category of MVPD, including cable operators, as well as the extent of regional clustering by cable operators;[10] (ii) the number of satellite-delivered, national programming networks and the percentage of such networks that are cable-affiliated; and (iii) the number of regional programming networks and the percentage of such networks that are cable-affiliated. We believe it is appropriate to consider similar data in determining whether the exclusive contract prohibition remains necessary today. We also seek comment on whether our assessment of the exclusivity prohibition should consider data concerning other types of ''satellite cable programming.''

23. In an effort to aid such an evaluation, we have prepared the tables in Appendices A through C of the *NPRM,* which contain data from previously released Commission documents as well as other sources. Appendices A through C are available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0320/FCC-12-30A1.pdf.* The first column of data, entitled ''1st Annual Report,'' focuses on data from the *1st Annual Report* on video competition.[11] The second column of data, entitled ''2002 Extension,'' focuses on data from the *2002 Extension Order.*[12] The third column of data, entitled ''2007 Extension,'' focuses on data from the *2007 Extension Order.*[13] The fourth and

[9] Because the Commission seeks comment on alternative approaches to the exclusive contract prohibition—retaining, sunsetting, or relaxing (either through market-based petitions or retaining a prohibition for regional sports networks)—the Proposed Rules attached hereto include potential rule amendments based on each of these alternatives.

[10] ''Clustering'' refers to ''an increase over time in the number of cable subscribers and homes passed by a single MSO in particular markets (accomplished via internal growth as well as by acquisitions).'' *2007 Extension Order,* 22 FCC Rcd at 17831, para. 56.

[11] *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992: Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* First Report, 9 FCC Rcd 7442 (1994) (''*1st Annual Report*'') (containing data as of 1994).

[12] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition,* Report and Order, 17 FCC Rcd 12124 (2002) (''*2002 Extension Order*'') (citing data from the *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Eighth Annual Report, 17 FCC Rcd 1244 (2002) (containing data as of June 2001) (''*8th Annual Report*'')).

[13] *See 2007 Extension Order,* 22 FCC Rcd 17791 (citing data from the *Annual Assessment of the*

Continued

final column of data, entitled ''Most Recent,'' focuses on the most recent data available. We believe that considering data from these four time periods will enable us to view the evolution of the video distribution and video programming markets over time. We invite commenters to submit more recent data in each of the categories identified, as well as data regarding the extent of regional clustering of cable operators, and any additional data the Commission should consider in its review.

a. Nationwide and Regional MVPD Subscribership

24. In past reviews of the exclusive contract prohibition, the Commission has assessed the percentage of MVPD subscribers nationwide that are attributable to each category of MVPD, including cable operators. The data in Appendix A indicate that the percentage of MVPD subscribers nationwide attributable to cable operators has declined over time, with the current percentage at approximately 58.5 percent, a decrease of 8.5 percentage points since the *2007 Extension Order.* On a regional basis, the market share held by cable operators in Designated Market Areas (''DMAs'') varies considerably, from a high in the 80 percent range to a low in the 20 percent range.

25. We seek comment on the extent to which we should consider online distributors of video programming in our analysis. The Commission recently stated that online distributors of video programming ''offer a tangible opportunity to bring customers substantial benefits'' and that they ''can provide and promote more programming choices, viewing flexibility, technological innovation and lower prices.'' While the Commission concluded that consumers today do not perceive online distributors as a substitute for traditional MVPD service, it stated that online distributors are a ''potential competitive threat'' and that they ''must have a similar array of programming'' if they are to ''fully compete against a traditional MVPD.'' In addition, in connection with the Commission's forthcoming *14th Annual Report* on video competition, the Commission sought comment on the emergence of online video distributors.[14] In light of possible cord-cutting and cord-shaving trends, we ask commenters to provide information regarding the effect that online distributors have had, or may have, on nationwide and regional MVPD subscription rates. Our task under Section 628(c)(5) is to determine whether the exclusive contract prohibition is necessary to preserve and protect ''competition,'' not competitors. Thus, to the extent that we conclude that competition in the video distribution market and the video programming market is currently sufficient to warrant sunsetting or relaxing the exclusive contract prohibition, how, if at all, should the emergence of a new category of potential competitor that could benefit from the exclusive contract prohibition impact our analysis?

b. Satellite-Delivered, Cable-Affiliated, National Programming Networks

26. In past reviews of the exclusive contract prohibition, the Commission has assessed the percentage of satellite-delivered, national programming networks that are cable-affiliated and the number of cable-affiliated networks that are among the Top 20 satellite-delivered, national programming networks as ranked by either subscribership or prime time ratings. The data in Appendix B indicate that, since the *2007 Extension Order,* (i) the percentage of satellite-delivered, national programming networks that are cable-affiliated has declined from 22 percent to approximately 14.4 percent; (ii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by subscribership has increased from six to seven; and (iii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by average prime time ratings has remained at seven. We note that the calculation of the percentage of satellite-delivered, national programming networks that are cable-affiliated is based on our estimate of a total of 800 satellite-delivered, national programming networks available to MVPDs today.[15] We seek comment on the reasonableness of this estimate and how, if at all, it should be revised. We also note that these data include satellite-delivered, national programming networks affiliated with Comcast, many of which (i.e., the ''Comcast-controlled networks'') are subject to program access conditions adopted in the *Comcast/NBCU Order* and will continue to be subject to these conditions for six more years (until January 2018, assuming they are not modified earlier in response to a petition) even if the exclusive contract prohibition were to sunset.[16] If the

Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report, 21 FCC Rcd 2503 (2006) (containing data as of June 2005) (''*12th Annual Report*'')).

[14] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Further Notice of Inquiry, 26 FCC Rcd 14091, 14112–13, paras. 52–55 (2011) (''*Further Notice for the 14th Report*'').

[15] In the *2007 Extension Order,* the Commission found that 22 percent of satellite-delivered, national programming networks were affiliated with cable operators. *See 2007 Extension Order,* 22 FCC Rcd at 17802–03, para. 18. This percentage was based on a total of 531 satellite-delivered, national programming networks, as stated in the *12th Annual Report. See 12th Annual Report,* 21 FCC Rcd at 2509–10, para. 21 and 2575, para. 157 (containing data as of June 2005). For purposes of the analysis in this *NPRM,* we increase this figure to 800 based on two factors. First, since 2005, we estimate that approximately 150 high-definition versions of networks previously provided only in standard definition have been launched. *See* SNL Kagan, *High-Definition Cable Networks Getting More Carriage,* Feb. 17, 2009; NCTA, Cable Networks, available at *http://www.ncta.com/Organizations.aspx?* type=orgtyp2&contentId=2907. Second, we estimate a net addition of approximately 100 networks, reflecting the increase over time in the number of national programming networks. *See 2007 Extension Order,* 22 FCC Rcd at 17836–37, para. 64 (noting the increase in national programming networks over time); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 550, para. 20 (2009) (''*13th Annual Report*'') (noting an increase of 34 programming networks between June 2005 and June 2006); *id.* at 731–36, Table C–4 (listing planned networks); SNL Kagan, Economics of Basic Cable Networks (2011 Edition), at 27 (listing cable networks launched after 2005).

[16] *See Comcast/NBCU Order,* 26 FCC Rcd at 4358, Appendix A, Condition II. The program access conditions reflected in Condition II apply to ''C–NBCU Programmers,'' which are defined as ''Comcast, C–NBCU, their Affiliates and any entity for which Comcast or C–NBCU manages or controls the licensing of Video Programming and/or any local broadcast television station on whose behalf Comcast or NBCU negotiates retransmission consent.'' *Id.* at 4356, Appendix A, Definitions. An ''Affiliate'' of any person means ''any person directly or indirectly controlling, controlled by, or under common control with, such person at the time at which the determination of affiliation is being made.'' *Id.* at 4355, Appendix A, Definitions. The issue of whether a particular cable network qualifies as a ''C–NBCU Programmer'' subject to these conditions is a fact-specific determination. For purposes of the estimates in this *NPRM,* and with the exception of the iN DEMAND networks discussed below, we assume that any network in which Comcast or NBCU holds a 50 percent or greater interest is a ''C–NBCU Programmer'' subject to these conditions. *See* Appendix B, Table 2 and Appendix C, Table 2 (available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0320/FCC-12-30A1.pdf*). We refer to these networks as ''Comcast-controlled networks.'' We refer to other networks in which Comcast or NBCU holds a less than 50 percent interest as ''Comcast-affiliated networks,'' which we assume for purposes of the estimates in this *NPRM* are not ''C–NBCU Programmers'' subject to the program access conditions adopted in the *Comcast/NBCU Order,* but are subject to the program access rules, including the exclusive contract prohibition. *See id.* Although Comcast has stated that it has a 53.7 percent interest in iN DEMAND, it has also stated that it ''cannot control decisionmaking at iN DEMAND.'' *See* Application of General Electric and Comcast, MB Docket No. 10–56 (Jan. 28, 2010), at 20 (stating that Comcast has a 53.7 percent interest

Comcast-controlled networks are excluded, the data in Appendix B indicate that, since the *2007 Extension Order,* (i) the percentage of satellite-delivered, national programming networks that are cable-affiliated has declined from 22 percent to approximately 11 percent; (ii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by subscribership has remained at six; and (iii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by average prime time ratings has fallen from seven to five. We seek comment on whether and how to account for different versions of the same network in our analysis. For example, to the extent a particular network is available in standard definition (''SD''), high definition (''HD''), 3D, and video-on-demand (''VOD''), should this be counted as four different networks for purposes of our analysis? If so, and if both cable-affiliated and unaffiliated networks are treated similarly, how will this impact the percentage of networks that are cable-affiliated?

c. Satellite-Delivered, Cable-Affiliated, Regional Programming Networks

27. In addition to national programming networks, the Commission in past reviews of the exclusive contract prohibition has assessed the extent to which regional programming networks are cable-affiliated. As an initial matter, we note that some regional networks may be terrestrially delivered and therefore not subject to the exclusive contract prohibition applicable to satellite-delivered, cable-affiliated programming. The data in Appendix C pertaining to regional networks do not distinguish between terrestrially delivered and satellite-delivered networks. We ask commenters to provide data regarding which cable-affiliated, regional programming networks, including RSNs, are satellite-delivered and which are terrestrially delivered.

28. For purposes of our analysis, we distinguish between RSNs and other regional networks. The Commission has previously held that RSNs have no good substitutes, are important for competition, and are non-replicable. As set forth in Appendix C, recent data indicate that the number of RSNs that are cable-affiliated has increased from 18 to 31 (not including HD versions) since the *2007 Extension Order,* and the percentage of all RSNs that are cable-affiliated has increased from 46 percent to approximately 52.3 percent. Are there networks that satisfy the Commission's definition of an RSN that are not included in the list of RSNs in Appendix C, such as certain local and regional networks that show NCAA Division I college football and basketball games? Should we include these and other similar networks, including unaffiliated networks, in our list of RSNs in Appendix C? In addition, are there networks included in the list of RSNs in Appendix C that do not satisfy the Commission's definition of an RSN? For example, do networks such as the Big Ten Network, PAC–12 Network, and The Mtn.—Mountain West Sports Network, which show NCAA Division I college football and basketball games of a particular college conference but not necessarily those of a particular team, satisfy the Commission's definition of an RSN? As required by this definition, do these and similar networks (i) distribute programming in ''a limited geographic region'' and (ii) carry the minimum amount of covered programming for an individual sports team.

29. We note that the figures in Appendix C include RSNs that are affiliated with Comcast, many of which are subject to program access conditions adopted in the *Comcast/NBCU Order* and which will continue to be subject to these conditions for six more years (until January 2018, assuming they are not modified earlier in response to a petition) even if the exclusive contract prohibition were to sunset. If the Comcast-controlled RSNs are excluded, the data in Appendix C indicate that the number of RSNs that are cable-affiliated has increased from 18 to 22 (not including HD versions) since the *2007 Extension Order,* and the percentage of RSNs that are cable-affiliated has decreased slightly from 46 percent to approximately 44.1 percent. With respect to non-RSN regional programming, we ask commenters to provide recent data on the number of these networks and the percentage of them that are cable-affiliated.

d. Other Types of Cable-Affiliated ''Satellite Cable Programming''

30. While the Commission in past reviews of the exclusive contract prohibition has considered linear and VOD programming networks, we also seek comment on whether there are other types of ''satellite cable programming'' or ''satellite broadcast programming'' that we should consider in assessing the exclusive contract prohibition. The Act defines ''satellite cable programming'' as (i) ''video programming'' (ii) which is ''transmitted via satellite'' and (iii) which is ''primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers.'' The Act defines ''video programming'' as ''programming provided by, or generally considered comparable to programming provided by, a television broadcast station.'' Are cable operators affiliated with forms of ''video programming'' that meet the other two requirements of the definition of ''satellite cable programming,'' but that are not necessarily considered programming ''networks''? For example, to the extent that cable operators own or are affiliated with film libraries and other content, to what extent does this content qualify as ''satellite cable programming''? If so, how should this factor into our consideration of the exclusive contract prohibition?

2. Assessing Whether the Data Support Retaining, Sunsetting, or Relaxing the Exclusive Contract Prohibition

31. We seek comment on whether the data set forth herein, as updated and supplemented by commenters, support retaining, sunsetting, or relaxing the exclusive contract prohibition. In addition to the specific questions stated herein, we seek comment on any new trends in the industry or any other issues that are relevant to our determination of whether the status of the MVPD marketplace today supports the sunset of the exclusive contract prohibition. We specifically seek comment on the effect of the development of online video on the marketplace. We also request information on the impact of the Comcast/NBCU and TWC/Time Warner transactions on the MVPD marketplace. To what extent, if any, should these transactions inform our analysis of whether to retain, sunset, or relax the exclusive contract prohibition? What other recent developments in the MVPD market since our 2007 review should we consider in deciding whether to retain, sunset, or relax the exclusive contract prohibition?

in iN DEMAND) (''*GE/Comcast/NBCU Application*''); Letter from Michael H. Hammer, Counsel for Comcast, to Marlene H. Dortch, FCC, MB Docket No. 10–56 (Oct. 22, 2010), at 2 n.5. Accordingly, for purposes of the estimates in this *NPRM,* we consider the iN DEMAND networks to be ''Comcast-affiliated'' networks, and not ''Comcast-controlled'' networks subject to the program access conditions adopted in the *Comcast/NBCU Order.* Nothing in this *NPRM* should be read to state or imply any position as to whether any particular network qualifies or does not qualify as a ''C–NBCU Programmer.''

32. In analyzing whether the exclusive contract prohibition remains necessary, the Commission has stated that it will ''assess whether, in the absence of the exclusive contract prohibition, vertically integrated programmers would have the ability and incentive to favor their affiliated cable operators over nonaffiliated competitive MVPDs and, if so, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming.'' Accordingly, in light of the data noted above and as updated and supplemented by commenters, we seek comment on whether cable-affiliated programmers would have the ability and incentive to favor their affiliated cable operators absent the exclusive contract prohibition in today's marketplace with the effect that competition and diversity in the distribution of video programming would not be preserved and protected. How has the exclusive contract prohibition impacted the general state of competition among MVPDs in the video distribution market? How would a sunset or relaxation of the exclusive contract prohibition affect consumers and competition in the video distribution market, and how would a sunset or relaxation affect the potential entry of new competitors in the market? Is there any basis for treating satellite-delivered, cable-affiliated programming and terrestrially delivered, cable-affiliated programming differently with respect to the exclusive contract prohibition? Are there differences between satellite-delivered programming and terrestrially delivered programming that would result in cable operators having a greater ability and incentive to favor affiliates providing satellite-delivered programming that warrants extension of the exclusive contract prohibition? To the extent the data support retaining the exclusive contract prohibition as it exists today, we seek comment on the appropriate length of an extension. Should the sunset date be five years from the current sunset date (i.e., until October 5, 2017), consistent with the two prior five-year extensions?

a. Ability

33. In assessing whether cable-affiliated programmers have the ''ability'' to favor their affiliated cable operators with the effect that competition and diversity in the distribution of video programming would not be preserved and protected, the Commission has explained that it considers whether satellite-delivered, cable-affiliated programming remains programming that is necessary for competition and for which there are no good substitutes. In the *2007 Extension Order,* the Commission found that there were no good substitutes for certain satellite-delivered, cable-affiliated programming, and that such programming remained necessary for viable competition in the video distribution market. Accordingly, the Commission concluded that cable-affiliated programmers retained ''the ability to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected absent the rule.'' In reaching this conclusion, the Commission explained that ''[w]hat is most significant to our analysis is not the percentage of total available programming that is vertically integrated with cable operators, but rather the popularity of the programming that is vertically integrated and how the inability of competitive MVPDs to access this programming will affect the preservation and protection of competition in the video distribution marketplace.'' Moreover, the Commission acknowledged that ''there exists a continuum of vertically integrated programming, 'ranging from services for which there may be substitutes (the absence of which from a rival MVPD's program lineup would have little impact), to those for which there are imperfect substitutes, to those for which there are no close substitutes at all (the absence of which from a rival MVPD's program lineup would have a substantial negative impact).' ''

34. We seek comment on whether competitive MVPDs' access to satellite-delivered, cable-affiliated programming remains necessary today to preserve and protect competition in the video distribution marketplace. Is there any basis to depart from the Commission's conclusion in the *2007 Extension Order* that satellite-delivered, cable-affiliated programming remains necessary for viable competition in the video distribution market? We seek comment on whether and how the continued decline in the number and percentage of national programming networks that are cable-affiliated should impact our analysis, if at all. Despite a similar decline between the *2002 Extension Order* and the *2007 Extension Order,* the Commission in the *2007 Extension Order* nonetheless found that ''cable-affiliated programming continues to represent some of the most popular and significant programming available today'' and that ''vertically integrated programming, if denied to cable's competitors, would adversely affect competition in the video distribution market.'' Is this also true today, considering that the data in Appendices B and C indicate that, since the *2007 Extension Order,* (i) the percentage of satellite-delivered, national programming networks that are cable-affiliated has declined from 22 percent to approximately 14.4 percent; (ii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by subscribership has increased from six to seven; (iii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by average prime time ratings has remained at seven; and (iv) the number of cable-affiliated RSNs has increased from 18 to 31 (not including HD versions)?

35. To what extent should we consider Comcast-controlled networks in our review of the exclusive contract prohibition? Because these networks will continue to be subject to program access conditions adopted in the *Comcast/NBCU Order* for six more years (until January 2018, assuming they are not modified earlier in response to a petition) even if the exclusive contract prohibition were to sunset, is there any basis to consider them in assessing whether to retain, sunset, or relax the exclusive contract prohibition? With the Comcast-controlled networks excluded, the data in Appendices B and C indicate that, since the *2007 Extension Order,* (i) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by subscribership has remained at six; (ii) the number of cable-affiliated networks among the Top 20 satellite-delivered, national programming networks as ranked by average prime time ratings has fallen from seven to five; and (iii) the number of cable-affiliated RSNs has increased from 18 to 21 (not including HD versions). With the Comcast-controlled networks excluded from the analysis, is it still accurate to characterize cable-affiliated programming as ''some of the most popular and significant programming available today,'' the absence of which from an MVPD's offering would ''adversely affect competition in the video distribution market.'' Rather than focusing on the number and percentage of networks that are cable-affiliated, is it more critical to assess the extent to which cable-affiliated programming remains popular and without substitutes? We note that, in the *Comcast-NBCU Order,* the Commission

found that the ''the loss of Comcast-NBCU programming * * * would harm rival video distributors, reducing their ability or incentive to compete with Comcast for subscribers'' and that ''[t]his is particularly true for marquee programming, which includes a broad portfolio of national cable programming in addition to RSN and local broadcast programming; such programming is important to Comcast's competitors and without good substitutes from other sources.'' Is there any basis to reach a different conclusion with respect to satellite-delivered programming affiliated with other cable operators?

36. We ask commenters contending that access to certain satellite-delivered, cable-affiliated programming remains necessary to preserve and protect competition in the video distribution market to present reliable, empirical data supporting their positions, rather than merely labeling such programming as ''must have.'' While the Commission has recognized that some satellite-delivered, cable-affiliated programming has substitutes and that exclusive contracts involving such programming are unlikely to impact competition, are there certain categories of programming, such as RSNs, that we can presume have no close substitutes and that are necessary for competition? Does the wide variation in the importance and substitutability of satellite-delivered, cable-affiliated programming call for a case-by-case or categorical assessment of programming, rather than a broad rule that applies to all programming equally?

37. We also seek comment on whether a sunset of the exclusive contract prohibition would result in increased vertical integration in the video marketplace. If cable operators are permitted to enter into exclusive contracts with satellite-delivered, cable-affiliated programmers, will this result in the acquisition of existing programming networks by cable operators, thereby increasing vertical integration? How can we accurately predict any such expected increase as we assess whether to retain, sunset, or relax the exclusive contract prohibition? Are cable operators more likely to acquire established networks that provide popular and non-substitutable programming, rather than creating new networks or investing in fledgling networks? Are there certain categories of programming networks that are more likely to be acquired or launched by cable operators? For example, we note that TWC recently announced that it will launch two RSNs in 2012 featuring the games of the Los Angeles Lakers, including the first Spanish-language RSN. Are cable operators expected to make further investments in RSNs in the future, especially if the exclusive contract prohibition were to sunset?

b. Incentive

38. In evaluating whether vertically integrated programmers retain the incentive to favor their affiliated cable operators over competitive MVPDs, the Commission analyzes ''whether there continues to be an economic rationale for vertically integrated programmers to engage in exclusive agreements with cable operators that will cause [] anticompetitive harms.'' The Commission has explained that, if a vertically integrated cable operator withholds programming from competitors, it can recoup profits lost at the upstream level (i.e., lost licensing fees and advertising revenues) by increasing the number of subscribers of its downstream MVPD division. The Commission explained that, particularly ''where competitive MVPDs are limited in their market share, a cable-affiliated programmer will be able to recoup a substantial amount, if not all, of the revenues foregone by pursuing a withholding strategy.'' Moreover, in the *2007 Extension Order,* the Commission provided an empirical analysis demonstrating that the profitability of withholding increases as the number of television households passed by a vertically integrated cable operator increases in a given market area, such as through clustering.

39. The Commission concluded in the *2007 Extension Order* that market developments since 2002 did not yet support the lifting of the exclusive contract prohibition, but ''there nevertheless may come a point when these developments will be sufficient to allow the prohibition to sunset.'' Similarly, in upholding the *2007 Extension Order,* the D.C. Circuit stated its expectation that, if the market continued evolving rapidly, the Commission could soon allow the exclusive contract prohibition to sunset, which Congress intended to occur at some point. We seek comment on whether now, almost five years since the most recent extension of the exclusive contract prohibition, we have reached such a point.

40. As set forth in Appendix A, the percentage of MVPD subscribers nationwide attributable to cable operators has fallen since 2007, from an estimated 67 percent to approximately 58.5 percent today. Is there a certain market share threshold that, if reached, will render it unlikely for satellite-delivered, cable-affiliated programmers to withhold national networks from competitive MVPDs? We ask commenters to provide empirical analyses to support their positions. Has the decline in cable market share benefited consumers, such as through lower prices, or in some other way? If not, does that suggest that the level of competition in the video distribution market has not reached a point where the exclusive contract prohibition should sunset, or is the price of cable offerings determined by other factors?

41. We also seek comment on how the current state of cable system clusters and cable market share in regional markets should affect our decision on whether to retain, sunset, or relax the exclusive contract prohibition. On a regional basis, the market share held by cable operators in DMAs varies considerably, from a high in the 80 percent range to a low in the 20 percent range. In some major markets, such as New York, Philadelphia, and Boston, the share of MVPD subscribers attributable to cable operators far exceeds the national cable market share of 67 percent deemed significant in the *2007 Extension Order.* In other DMAs, such as Dallas, Denver, and Phoenix, data indicate that the share of MVPD subscribers attributable to cable operators is below 50 percent. How should this variation in regional market shares impact our analysis? Does this wide variation in cable market share on a regional and local basis call for a more granular assessment of the continued need for an exclusive contract prohibition in individual markets, rather than a broad rule that applies to all markets equally?

42. The Commission stated in the *2002 Extension Order* that ''clustering, accompanied by an increase in vertically integrated regional programming networks affiliated with cable MSOs that control system clusters, will increase the incentive of cable operators to practice anticompetitive foreclosure of access to vertically integrated programming.'' We seek comment on whether this conclusion remains valid today. In the *2007 Extension Order,* the Commission found that the cable industry had continued to form regional clusters since the *2002 Extension Order.* We note that a decrease in the amount of regional clustering could decrease the market share of individual cable operators within the footprints of regional programming, which would create fewer opportunities to implement exclusive arrangements. Has the amount of regional clustering increased or decreased since the *2007 Extension Order*? We seek comment on whether events since the *2007 Extension Order* mitigate or exacerbate the impact of

clustering. In the *2007 Extension Order,* the Commission provided an empirical analysis demonstrating that the profitability of withholding increases as the number of television households passed by a vertically integrated cable operator increases in a given market area, such as through clustering. The analysis examined two vertically integrated cable operators on a DMA-by-DMA basis. Taking account of various factors, including the characteristics of the affiliated RSN and the profitability figures of the vertically integrated cable operator examined, the analysis identified multiple DMAs in which withholding would be profitable. In those DMAs, the homes passed by the vertically integrated cable operator as a percentage of television households ranged from 60–80 percent. We seek comment on this analysis and whether, based on current data, it continues to support retaining an exclusive contract prohibition, particularly in those markets where a vertically integrated cable operator passes a significant number of television households. We also note that the Commission in the *2007 Extension Order* performed an analysis that concluded that withholding of some nationally distributed programming networks could be profitable if as little as 1.9 percent of non-cable subscribers were to switch to cable as a result of the withholding. We seek comment on this analysis and whether, based on current data, it continues to support retaining an exclusive contract prohibition for national programming networks.

43. Has the current state of horizontal consolidation in the cable industry increased or decreased incentives for anticompetitive foreclosure of access to vertically integrated programming? We note that the data in Appendix A indicate that the percentage of MVPD subscribers receiving their video programming from one of the four largest vertically integrated cable MSOs has decreased from between 54 and 56.75 percent as stated in the *2007 Extension Order* to approximately 42.8 percent today. What impact, if any, does this have on our review of the exclusive contract prohibition?

3. Impact on the Video Programming Market

44. We seek comment on how retaining, sunsetting, or relaxing the exclusive contract prohibition would impact the creation of new national, regional, and local programming and which of these options is most likely to increase programming diversity. What effect has the exclusive contract prohibition had on the incentives of incumbent cable operators to develop and produce video programming? Are incumbent cable operators less willing to invest in programming because they cannot enter into exclusive contracts and therefore must share their programming investment with their competitors? In the *2007 Extension Order,* the Commission concluded that the extension of the exclusive contract prohibition would not create a disincentive for the creation of new programming. In support of this finding, the Commission noted that, despite the exclusive contract prohibition, the number of programming networks, including cable-affiliated networks, had increased since 1994. Is there any basis to conclude that the number of video programming networks, including cable-affiliated networks, would be even greater today if the exclusive contract prohibition had sunset earlier? Since the 2007 extension of the exclusive contract prohibition, has there been an increase or decrease in the development, promotion, and launch of new video programming services by incumbent cable operators? Would a sunset of the exclusive contract prohibition entice incumbent cable operators to invest in and launch new programming networks to compete with established networks, leading to greater diversity in the video programming market, or are incumbent cable operators more likely to acquire these established networks?

45. What effect has the exclusive contract prohibition had on the incentives of competitive MVPDs and non-MVPD-affiliated programmers to develop and produce video programming? In the *2007 Extension Order,* the Commission noted evidence that some competitive MVPDs had begun to invest in their own video programming, despite their ability to access satellite-delivered, cable-affiliated programming as a result of the exclusive contract prohibition. To what extent have competitive MVPDs invested in their own video programming? In the *2007 Extension Order,* the Commission ''caution[ed] competitive MVPDs to take any steps they deem appropriate to prepare for the eventual sunset of the prohibition, including further investments in their own programming.'' Have competitive MVPDs made further investments in their own programming since that time? If the exclusive contract prohibition were to sunset (wholly or partially), would competitive MVPDs be likely to increase their investment in video programming in order to ensure that they have a robust offering of programming to counteract any exclusive deals that incumbent cable operators might enter into with their affiliated programmers? We note that certain competitive MVPDs are currently subject to the exclusive contract prohibition, such as those that are cable operators or common carriers that provide video programming directly to subscribers. Has the exclusive contract prohibition caused these competitive MVPDs to be less willing to invest in programming because they must share their programming investment with their competitors? Would a sunset of the exclusive contract prohibition entice these competitive MVPDs to invest in and launch new programming networks? Do competitive MVPDs have the resources to invest in creating their own video programming? If not, to the extent that certain satellite-delivered, cable-affiliated programming is withheld from competitive MVPDs, is it likely that non-MVPD-affiliated programming vendors will fill the void by creating competing programming to license to competitive MVPDs, thereby leading to even greater diversity in the video programming market? Are there certain categories of programming that cannot be replicated by either competitive MVPDs or non-MVPD-affiliated programming vendors? In the *2010 Program Access Order,* the Commission stated:

> If particular programming is replicable, our policies should encourage MVPDs or others to create competing programming, rather than relying on the efforts of others, thereby encouraging investment and innovation in programming and adding to the diversity of programming in the marketplace. Conversely, when programming is non-replicable and valuable to consumers, such as regional sports programming, no amount of investment can duplicate the unique attributes of such programming, and denial of access to such programming can significantly hinder an MVPD from competing in the marketplace.[17]

While the Commission found that RSNs are non-replicable, it concluded that local news and local community or educational programming is ''readily replicable programming.'' We seek comment on how the distinction between replicable and non-replicable content should impact our review of the exclusive contract prohibition.

[17] *See Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements, First Report and Order,* 25 FCC Rcd 746, 750–51, para. 9 *(2010) (''2010 Program Access Order''), affirmed in part and vacated in part sub nom. Cablevision Sys. Corp. et al.* v. *FCC,* 649 F.3d 695 (D.C. Cir. 2011) (''*Cablevision II*'').

4. Alternatives to Retaining the Exclusive Contract Prohibition as It Exists Today

46. As discussed in further detail below, to the extent the data do not support retaining the exclusive contract prohibition as it exists today, we seek comment on whether we can nonetheless preserve and protect competition in the video distribution market either by (i) sunsetting the prohibition in its entirety and relying solely on existing protections provided by the program access rules that will not sunset; or (ii) relaxing the exclusive contract prohibition, such as through removal of the prohibition on a market-by-market basis based on the extent of competition in the market or by retaining the prohibition only for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming.

a. Sunsetting the Exclusive Contract Prohibition in Its Entirety and Relying Solely on Existing Protections

47. As discussed above, the exclusive contract prohibition is just one of several protections that the program access rules afford to competitive MVPDs in their efforts to compete in the video distribution market. Even if the exclusive contract prohibition were to sunset (wholly or partially), these other existing protections will remain in effect. We seek comment on whether these existing protections are sufficient to preserve and protect competition in the video distribution market if the exclusive contract prohibition were to sunset and whether any additional safeguards should be adopted.

(i) Section 628(b) Complaints

48. The Act and the Commission's existing rules allow for the filing of complaints alleging a violation of Section 628(b) of the Act and Section 76.1001(a) of the Commission's rules. These provisions require a complainant to establish three elements in order to demonstrate a violation: (i) The defendant is one of the three entities covered by these provisions (i.e., a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor); (ii) the defendant has engaged in an ''unfair act''; and (iii) the ''purpose or effect'' of the unfair act is to ''significantly hinder or prevent'' an MVPD from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. Even if the exclusive contract prohibition were to sunset (wholly or partially), an MVPD would still have the option to file a complaint with the Commission alleging that an exclusive contract between a cable operator and a satellite-delivered, cable-affiliated programmer involving satellite-delivered, cable-affiliated programming violates these provisions. We note that the Commission currently considers allegedly ''unfair acts'' involving terrestrially delivered, cable-affiliated programming on a case-by-case basis pursuant to Section 628(b) of the Act and Section 76.1001(a) of the Commission's rules. Applying these provisions, the Commission recently found that the withholding of terrestrially delivered, cable-affiliated RSNs from certain MVPDs in the New York, Buffalo, and Hartford/New Haven DMAs violated these provisions. We seek comment regarding whether there are any justifications for applying different rules and procedures to satellite-delivered, cable-affiliated programming than those that apply to terrestrially delivered, cable-affiliated programming.

49. The Commission previously concluded that Section 628(b) was not an adequate substitute for the prohibition on exclusive contracts under Section 628(c)(2)(D). Among other things, the Commission noted that Section 628(b) ''carries with it an added burden'' to demonstrate that the ''purpose or effect'' of the ''unfair act'' is to ''significantly hinder or prevent'' an MVPD from providing programming. We seek comment on the costs and benefits of moving from a broad, prophylactic prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming to reliance instead on a case-by-case process, including Section 628(b) complaints. To what extent would a case-by-case process be more costly for competitive MVPDs than the current prohibition on exclusive contracts? What would be the benefits of eliminating the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming? Would these benefits outweigh the costs of a case-by-case process?

(a) Case-by-Case Complaint Process

50. We note that a case-by-case complaint process alleging a violation of Section 628(b) would differ from the current prohibition on exclusive contracts in Section 628(c)(2)(D) in several important respects. First, under the current exclusive contract prohibition, all exclusive contracts between a cable operator and a satellite-delivered, cable-affiliated programmer pertaining to satellite-delivered, cable-affiliated programming are considered categorically ''unfair.'' If the exclusive contract prohibition were to sunset (wholly or partially), however, exclusive contracts would no longer always be presumed ''unfair.'' Rather, a complainant would have the burden to establish that the exclusive contract at issue is ''unfair'' based on the facts and circumstances presented. Second, under the current exclusive contract prohibition, all exclusive contracts between a cable operator and a satellite-delivered, cable-affiliated programmer pertaining to satellite-delivered, cable-affiliated programming are presumed to harm competition, and competitive MVPDs alleging a prohibited exclusive contract are not required to demonstrate harm. In alleging that an exclusive contract violates Section 628(b), however, a complainant would have the burden of proving that the exclusive contract has the ''purpose or effect'' of ''significantly hindering or preventing'' the MVPD from providing satellite cable programming or satellite broadcast programming. Third, the current exclusive contract prohibition forbids all exclusive contracts between a cable operator and a satellite-delivered, cable-affiliated programmer pertaining to satellite-delivered, cable-affiliated programming, unless a cable operator or programmer can satisfy its burden of demonstrating that an exclusive contract serves the public interest based on the factors set forth in Section 628(c)(4) of the Act and Section 76.1002(c)(4) of the Commission's rules. If the exclusive contract prohibition were to sunset (wholly or partially), however, the situation would be reversed. That is, such exclusive contracts would be permitted, unless an MVPD could carry its burden of demonstrating that the exclusive contract violates Section 628(b) (or, potentially, Section 628(c)(2)(B)). We seek comment on the above interpretations of Section 628(b) as it pertains to exclusive contracts involving satellite-delivered, cable-affiliated programming, particularly the practical implications for competitive MVPDs, cable operators, and satellite-delivered, cable-affiliated programmers.

(b) Extending Rules and Policies Adopted for Section 628(b) Complaints Involving Terrestrially Delivered, Cable-Affiliated Programming to Section 628(b) Complaints Challenging Exclusive Contracts Involving Satellite-Delivered, Cable-Affiliated Programming

51. The Commission in the *2010 Program Access Order* adopted a case-by-case complaint process to address unfair acts involving terrestrially delivered, cable-affiliated programming

that allegedly violate Section 628(b). In doing so, the Commission adopted rules and policies that would appear to be equally appropriate for complaints alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates Section 628(b). Accordingly, if the exclusive contract prohibition were to sunset (wholly or partially), we propose to apply these same rules and policies to such complaints.

52. First, the Commission declined to adopt specific evidentiary requirements with respect to proof that the defendant's alleged activities violated Section 628(b). Among other things, the Commission explained that the evidence required to satisfy this burden will vary based on the facts and circumstances of each case and may depend on, among other things, whether the complainant is a new entrant or an established competitor and whether the programming the complainant seeks to access is new or existing programming. In addition, the Commission provided the following illustrative examples of evidence that litigants might consider providing: (i) An appropriately crafted regression analysis that estimates what the complainant's market share in the MVPD market would be if it had access to the programming and how that compares to its actual market share; or (ii) statistically reliable survey data indicating the likelihood that customers would choose not to subscribe to or not to switch to an MVPD that did not carry the withheld programming. The Commission also explained that the discovery process will enable parties to obtain additional evidence. If the exclusive contract prohibition were to sunset (wholly or partially), we propose to apply the same requirements to complaints alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates Section 628(b).

53. Second, the Commission found that one category of programming, RSNs, was shown by both Commission precedent and record evidence to be very likely to be both non-replicable and highly valued by consumers. Rather than requiring litigants and the Commission staff to undertake repetitive examinations of this RSN precedent and the relevant historical evidence, the Commission instead allowed complainants to invoke a rebuttable presumption that an ''unfair act'' involving a terrestrially delivered, cable-affiliated RSN has the purpose or effect set forth in Section 628(b). The D.C. Circuit upheld the Commission's decision to establish a rebuttable presumption of ''significant hindrance'' for ''unfair acts'' involving terrestrially delivered, cable-affiliated RSNs under both First Amendment and Administrative Procedure Act (''APA'') review. Accordingly, to the extent the exclusive contract prohibition were to sunset (wholly or partially) and we do not retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs, should we similarly adopt a rebuttable presumption of ''significant hindrance'' under Section 628(b) for exclusive contracts involving satellite-delivered, cable-affiliated RSNs? If so, we propose to define the term ''RSN'' in the same way the Commission defined that term in the *2010 Program Access Order.* Is there any basis to have a rebuttable presumption of ''significant hindrance'' for terrestrially delivered, cable-affiliated RSNs, but not when these networks are satellite-delivered? Are there any other categories of satellite-delivered, cable-affiliated programming that can be deemed ''must have'' and for which we should establish a rebuttable presumption of ''significant hindrance''? We note that the Commission in the *Comcast-NBCU Order* concluded that ''certain national cable programming networks produce programming that is more widely viewed and commands higher advertising revenue than certain broadcast or RSN programming.'' Are there other types of satellite-delivered, cable-affiliated programming besides RSNs that have no good substitutes, are important for competition, and are non-replicable, as the Commission has found with respect to RSNs? To the extent that commenters contend that there are, we ask that they provide reliable, empirical data supporting their positions, rather than merely labeling such programming as ''must have.'' In addition, we request commenters to provide a rational and workable definition of such programming that can be applied objectively.

54. Third, the Commission concluded that HD programming is growing in significance to consumers and that consumers do not consider the SD version of a particular channel to be an adequate substitute for the HD version due to the different technical characteristics and sometimes different content. Accordingly, the Commission determined that it would analyze the HD version of a network separately from the SD version of similar content for purposes of determining whether an ''unfair act'' has the purpose or effect set forth in Section 628(b). Thus, the fact that a respondent provides the SD version of a network to the complainant will not alone be sufficient to refute the complainant's showing that lack of access to the HD version has the purpose or effect set forth in Section 628(b). Similarly, in cases involving an RSN, withholding the HD feed is rebuttably presumed to cause ''significant hindrance'' even if an SD version of the network is made available to competitors. The D.C. Circuit upheld the Commission's decision on this issue under both First Amendment and APA review. To the extent the exclusive contract prohibition were to sunset (wholly or partially), we believe the same requirements should apply to complaints alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates Section 628(b). We seek comment on this proposal.

(c) Additional Rules for Complaints Challenging Exclusive Contracts Involving Satellite-Delivered, Cable-Affiliated Programming

55. To the extent the exclusive contract prohibition were to sunset (wholly or partially), we seek comment on ways to reduce burdens on both complainants and defendants in connection with complaints alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates Section 628(b) (or, potentially, Section 628(c)(2)(B)). We acknowledge that a case-by-case complaint process for addressing exclusive contracts involving satellite-delivered, cable-affiliated, national programming networks may impose some burdens for litigants and the Commission, especially in comparison to the current broad, prophylactic prohibition. For example, although several MVPDs could join as complainants, the showing in the complaint and any subsequent ruling on the complaint (either grant or denial) will be limited to the complainants. Other competitive MVPDs that are not parties to the complaint would have to file their own complaint and demonstrate how the exclusive contract at issue is ''unfair'' and has ''significantly hindered'' them from providing programming. Given the number of competitive MVPDs nationwide that might seek access to a satellite-delivered, cable-affiliated, national programming network that is subject to an exclusive contract with cable operators, the number of such complaints involving just one national network could be significant.

56. We seek comment on how to reduce these potential burdens for both complainants and defendants. For example, rather than requiring litigants and the Commission staff to undertake

repetitive examinations of the same network, we seek comment on whether the Commission could establish a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a satellite-delivered, cable-affiliated programming network violates Section 628(b) (or, potentially, Section 628(c)(2)(B)), any other exclusive contract involving the same network violates Section 628(b) (or Section 628(c)(2)(B)). We seek comment on whether adoption of such a rebuttable presumption is rational. For example, in the event the Commission finds that an exclusive contract violates Section 628(b) (or Section 628(c)(2)(B)) in response to a complaint brought by a small, fledgling MVPD, is it rational to assume that the Commission is likely to reach the same conclusion when the complaint is brought by a large, established MVPD?

57. We also seek comment on whether there would be any benefit to retaining post-sunset our existing process whereby a cable operator or a satellite-delivered, cable-affiliated programmer may file a Petition for Exclusivity seeking Commission approval for an exclusive contract involving satellite-delivered, cable-affiliated programming by demonstrating that the arrangement serves the public interest based on the factors set forth in Section 628(c)(4) of the Act and Section 76.1002(c)(4) of the Commission's rules. While a cable operator post-sunset would be permitted generally to enter into an exclusive contract with a satellite-delivered, cable-affiliated programming network without receiving prior Commission approval, we propose that the grant of a Petition for Exclusivity would immunize such an exclusive contract from potential complaints alleging a violation of Section 628(b), as well as Section 628(c)(2)(B). We further propose that, to the extent we were to deny a Petition for Exclusivity post-sunset, the petitioner would not be precluded from entering into or enforcing the exclusive contract subject to the petition. Rather, denial of a Petition for Exclusivity post-sunset would mean that the exclusive contract at issue may not be permissible in all cases if challenged pursuant to Section 628(b) or, potentially, Section 628(c)(2)(B). We seek comment on the costs and benefits of retaining this petition process after a sunset, especially whether the burdens for the Commission staff and impacted parties would outweigh any benefits. We also seek comment on any other ways to reduce the potential burdens for both complainants and defendants resulting from a case-by-case complaint process.

(ii) Section 628(c)(2)(B) Discrimination Complaints

58. We believe that discrimination complaints under Section 628(c)(2)(B) also will provide some protection for competitive MVPDs should the exclusive contract prohibition sunset (wholly or partially). Discrimination can take two forms: price discrimination and non-price discrimination. Non-price discrimination includes an unreasonable refusal to license programming to an MVPD. A refusal to license is permissible only if there is a ''legitimate business justification'' for the conduct. As discussed below, a refusal to license can take two forms. First, a satellite-delivered, cable-affiliated programmer may refuse to license its programming to all MVPDs in a market except for one (such as its affiliated cable operator), thereby providing the affiliated cable operator with exclusive access to the programming. Second, a satellite-delivered, cable-affiliated programmer may selectively refuse to license its programming to certain MVPDs in a market (such as a recent entrant) while licensing the programming to other MVPDs (such as its affiliated cable operator and DBS operators). We seek comment on each of these scenarios below.

(a) Challenging an Exclusive Arrangement as an Unreasonable Refusal to License

59. We seek comment on the interplay between the potential sunset of the exclusive contact prohibition in Section 628(c)(2)(D) and the continued prohibition on unreasonable refusals to license pursuant to Section 628(c)(2)(B). As an initial matter, we note that Section 628(c)(2)(D) prohibits ''exclusive contracts * * * between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest.'' This language presumes that an agreement will exist between the cable operator and the satellite-delivered, cable-affiliated programmer that would provide the cable operator with exclusivity. In the event that a satellite-delivered, cable-affiliated programmer unilaterally refuses to license its programming to all MVPDs in a market except for one cable operator and without any exclusive contract with the cable operator, we believe an MVPD can challenge this conduct as an unreasonable refusal to license in violation of Section 628(c)(2)(B). While a cable operator would be permitted generally to enter into an exclusive contract with the satellite-delivered, cable-affiliated programmer in the event of a sunset, the scenario presented here does not involve an exclusive contract; rather, it involves unilateral action by the satellite-delivered, cable-affiliated programmer. We seek comment on this interpretation. In defending against a complaint, the satellite-delivered, cable-affiliated programmer would be required to provide a ''legitimate business justification'' for its conduct.

60. In the event that a satellite-delivered, cable-affiliated programmer and a cable operator enter into an exclusive contract post-sunset (complete or partial), we seek comment on whether an MVPD can challenge this exclusive contract as an unreasonable refusal to license in violation of Section 628(c)(2)(B).[18] We believe that there are legitimate arguments for and against this interpretation. We seek comment on which of the interpretations set forth below is more reasonable and consistent with the goals of Section 628.

61. In favor of interpreting Section 628(c)(2)(B) to allow a challenge post-sunset to an exclusive contract as an unreasonable refusal to license, we note that Section 628(c)(2)(B)(iv) provides that it is not a violation of Section 628(c)(2)(B) for a satellite-delivered, cable-affiliated programmer to ''enter[] into an exclusive contract that is permitted under [Section 628(c)(2)(D)].'' The Commission has previously interpreted this language to pertain to only those exclusive contracts that have been deemed by the Commission to be in the public interest pursuant to the factors set forth in Section 628(c)(4). This provision is silent regarding exclusive contracts that are generally permissible after a sunset pursuant to Section 628(c)(5). Does the omission of post-sunset exclusive contracts from both Section 628(c)(2)(D) and Section 628(c)(2)(B)(iv) mean that Congress intended that such contracts might still be challenged as impermissibly discriminatory in violation of Section 628(c)(2)(B)? In addition, we note that the exclusive contract prohibition in Section 628(c)(2)(D) applies to exclusive contracts between a satellite-delivered, cable-affiliated programmer and a cable operator; it does not apply to exclusive contracts between a satellite-delivered, cable-affiliated programmer and a DBS

[18] To the extent that we determine that an MVPD can challenge an exclusive contract as an unreasonable refusal to license in violation of Section 628(c)(2)(B) post-sunset, we seek comment above on ways to reduce the potential burdens for both complainants and defendants resulting from a case-by-case complaint process. *See supra* paras. 56–57.

operator. Both before and after a sunset, however, the decision of a satellite-delivered, cable-affiliated programmer to license its programming to a DBS operator but not to other MVPDs might be challenged as an unreasonable refusal to license pursuant to Section 628(c)(2)(B). If, post-sunset, an MVPD cannot challenge an exclusive arrangement between a satellite-delivered, cable-affiliated programmer and a cable operator as an unreasonable refusal to license in violation of Section 628(c)(2)(B), would this produce an anomalous result? Specifically, in challenging an exclusive contract between a satellite-delivered, cable-affiliated programmer and a cable operator, an MVPD would have to rely on Section 628(b), which places the burden on the MVPD to demonstrate that the defendant has engaged in an ''unfair act'' that has the ''purpose or effect'' of ''significantly hindering or preventing'' the MVPD from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. By contrast, in challenging an exclusive contract between a satellite-delivered, cable-affiliated programmer and a DBS operator, an MVPD could rely on Section 628(c)(2)(B), which presumes harm in every case and places the burden on the satellite-delivered, cable-affiliated programmer to provide a ''legitimate business justification'' for its conduct. Is there any basis for placing a greater burden on an MVPD in challenging an exclusive contract between a satellite-delivered, cable-affiliated programmer and a cable operator than between a satellite-delivered, cable-affiliated programmer and a DBS operator?

62. On the other hand, we note that there are legitimate arguments against interpreting Section 628(c)(2)(B) to allow an MVPD to challenge an exclusive contract between a satellite-delivered, cable-affiliated programmer and a cable operator post-sunset as an unreasonable refusal to license. Currently, with the exclusive contract prohibition in effect, an exclusive contract between a satellite-delivered, cable-affiliated programmer and a cable operator is prohibited, unless the programmer or cable operator can demonstrate that the exclusive contract serves the public interest based on the factors set forth in Section 628(c)(4). If, post-sunset, an MVPD can challenge an exclusive contract between a satellite-delivered, cable-affiliated programmer and a cable operator as an unreasonable refusal to license in violation of Section 628(c)(2)(B), the satellite-delivered, cable-affiliated programmer would be required to demonstrate a ''legitimate business reason'' for its conduct. Is it reasonable to interpret Section 628 to provide that, post-sunset, the public interest factors in Section 628(c)(4) would be replaced with a showing of a ''legitimate business reason'' in response to a complaint alleging a violation of Section 628(c)(2)(B)? We note that two of the public interest factors in Section 628(c)(4) focus on competition in the video distribution market, allowing a proponent of exclusivity to demonstrate how the exclusive contract will not adversely impact competition. In a complaint alleging discrimination under Section 628(c)(2)(B), however, the alleged discriminatory act is presumed to harm competition in every case. Is it reasonable to interpret Section 628 to provide that, pre-sunset, a satellite-delivered, cable-affiliated programmer or a cable operator could make a showing that an exclusive contract would not adversely impact competition pursuant to the public interest factors in Section 628(c)(4), but, post-sunset, exclusivity is presumed to harm competition in every case when challenged pursuant to Section 628(c)(2)(B)?

63. In addition to the foregoing, we seek comment on whether the legislative history of the 1992 Cable Act supports either of the above interpretations. The Senate Report accompanying the 1992 Cable Act states that the ''bill does not equate exclusivity with an unreasonable refusal to deal.'' This statement might be read to imply that Congress considered exclusive contracts and unreasonable refusals to deal to be mutually exclusive, with the effect that once a satellite-delivered, cable-affiliated programmer enters into an exclusive contract with a cable operator post-sunset, the contract cannot be challenged as an unreasonable refusal to license pursuant to Section 628(c)(2)(B). Another part of the Senate Report, however, states that ''the dominance in the market of the distributor obtaining exclusivity should be considered in determining whether an exclusive arrangement amounts to an unreasonable refusal to deal.'' This statement might be read to imply that Congress did not consider exclusive contracts and unreasonable refusals to license to be mutually exclusive, with the effect that an exclusive contract could be challenged as an unreasonable refusal to license pursuant to Section 628(c)(2)(B).

(b) Selective Refusals To License Programming

64. Notwithstanding the question raised in the previous section of whether an MVPD can challenge post-sunset an exclusive arrangement between a satellite-delivered, cable-affiliated programmer and a cable operator as an unreasonable refusal to license in violation of Section 628(c)(2)(B), our rules and precedent establish that the discrimination provision in Section 628(c)(2)(B) would prevent a satellite-delivered, cable-affiliated programmer from licensing its content to MVPD A (such as a DBS operator) in a given market area, but to selectively refuse to license the content to MVPD B (such as a telco video provider) in the same area, absent a legitimate business reason. When a satellite-delivered, cable-affiliated programmer discriminates among MVPDs in this manner, it faces the prospect of a complaint alleging non-price discrimination in violation of Section 628(c)(2)(B). As noted above, complaints alleging a violation of Section 628(c)(2)(B) do not require a showing of harm to the complainant.

65. We seek comment on whether the right of an MVPD to challenge a selective refusal to license as a form of prohibited non-price discrimination under Section 628(c)(2)(B) will help to preserve and protect competition in the video distribution market if the exclusive contract prohibition were to sunset (wholly or partially). As reflected in Appendix A, the two DBS operators together have approximately 34 percent of MVPD subscribers nationwide today. Because a national programming network that refuses to license its content to these MVPDs will forgo significant licensing fees and advertising revenues, is it reasonable to assume that most satellite-delivered, cable-affiliated, national programming networks will license their content to DBS operators? If they do, we interpret Section 628(c)(2)(B) as permitting other competitive MVPDs, such as a telco video provider, to bring non-price discrimination complaints should these programmers refuse to deal with them. How does this analysis change with respect to local and regional markets, where cable operators may have an overwhelming share of the market or a vertically integrated cable operator may pass a large percentage of television households?

66. The Commission previously concluded that the discrimination provision in Section 628(c)(2)(B) is not an adequate substitute for the prohibition on exclusive contracts

under Section 628(c)(2)(D). Among other things, the Commission noted that a non-price discrimination complaint requires an MVPD to demonstrate that the conduct was ''unreasonable,'' which the Commission noted may be difficult to establish. We seek comment on the costs and benefits of moving from a broad, prophylactic prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming to reliance instead on a case-by-case process, including non-price discrimination complaints.

(iii) Section 628(c)(2)(A) Undue Influence Complaints

67. We seek comment on the extent to which undue influence complaints under Section 628(c)(2)(A) may also provide some protection for competitive MVPDs should the exclusive contract prohibition sunset (wholly or partially). Section 628(c)(2)(A) precludes a cable operator that has an attributable interest in a satellite cable programming vendor or a satellite broadcast programming vendor from ''unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite cable programming or satellite broadcast programming to any unaffiliated [MVPD].'' The Commission has explained that the ''concept of undue influence between affiliated firms is closely linked with discriminatory practices and exclusive contracting'' and that the prohibition on undue influence ''can play a supporting role where information is available (such as might come from an internal 'whistleblower') that evidences 'undue influence' between affiliated firms to initiate or maintain anticompetitive discriminatory pricing, contracting, or product withholding.'' The Commission acknowledged that ''such conduct may be difficult for the Commission or complainants to establish'' but ''its regulation provides a useful support for direct discrimination and contracting regulation.'' To what extent, if any, will the prohibition on undue influence provide some protection for competitive MVPDs should the exclusive contract prohibition sunset? If the exclusive contract prohibition were to sunset, then a cable operator would be permitted generally to enter into an exclusive contract with a satellite-delivered, cable-affiliated programming network, although the contract may be deemed to violate Section 628(b) (or, potentially, Section 628(c)(2)(B)) after the conclusion of a complaint proceeding. In the event the exclusive contract prohibition sunsets, if a cable operator ''unduly influences'' a satellite-delivered, cable-affiliated programmer to enter into an exclusive contract, would that conduct violate Section 628(c)(2)(A) even though the underlying contract would be permissible (absent a finding of a violation of Section 628(b) (or, potentially, Section 628(c)(2)(B))? Stated differently, in the event of a sunset, can a cable operator ''unduly influence'' a satellite-delivered, cable-affiliated programmer to enter into an exclusive contract only if the underlying contract violates Section 628(b) (or, potentially, Section 628(c)(2)(B))?

b. Relaxing the Exclusive Contract Prohibition

68. Rather than sunsetting the exclusive contract prohibition in its entirety and relying solely on existing protections provided by the program access rules that will not sunset, we seek comment on whether we should instead relax, rather than sunset, the exclusivity prohibition in the ways discussed below, or in some other way. We ask parties to comment on whether retaining the exclusivity ban in certain circumstances would be more effective in preserving and protecting competition in the video distribution market than permitting the exclusive contract prohibition to sunset entirely. In addition to the proposals below, we invite comment on other ways to relax the exclusive contract prohibition.

(i) Sunsetting the Exclusive Contract Prohibition on a Market-by-Market Basis

69. We seek comment on whether to establish a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can file a Petition for Sunset seeking to remove the exclusive contract prohibition on a market-by-market basis based on the extent of competition in the market.[19] In the *2002 Extension Order,* the Commission explained that ''clustering, accompanied by an increase in vertically integrated regional programming networks affiliated with cable MSOs that control system clusters, will increase the incentive of cable operators to practice anticompetitive foreclosure of access to vertically integrated programming.'' Moreover, as noted above, the market share held by cable operators in DMAs varies considerably, from a high in the 80 percent range to a low in the 20 percent range. As the Commission has explained previously, particularly ''where competitive MVPDs are limited in their market share, a cable-affiliated programmer will be able to recoup a substantial amount, if not all, of the revenues foregone by pursuing a withholding strategy.'' Moreover, in the *2007 Extension Order,* the Commission provided an empirical analysis demonstrating that the profitability of withholding increases as the number of television households passed by a vertically integrated cable operator increases in a given market area, such as through clustering. Accordingly, a cable-affiliated programmer will have an increased incentive to enter into exclusive contracts with cable operators in those areas where the market share of competitive MVPDs is comparatively low or where its affiliated cable operator passes a large percentage of television households or where both circumstances are present. If there was not a blanket prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming, would incumbent cable operators and cable-affiliated programmers enter into exclusive contracts in these markets? If so, does the wide variation in cable market share and television households passed by a vertically integrated cable operator on a regional and local basis call for a more granular assessment of the continued need for an exclusive contract prohibition in individual markets, rather than a broad rule that applies to all markets equally? Would such a market-by-market assessment necessarily be based on a Commission finding that satellite-delivered, cable-affiliated programming remains necessary for competition in the video distribution market? That is, absent such a finding, would a market-by-market assessment approach mean that the exclusive contract prohibition would sunset only in areas where satellite-delivered, cable-affiliated programmers lack an incentive to enter into exclusive contracts, regardless of the importance of the programming at issue for competition? Is there any basis for interpreting the sunset provision in Section 628(c)(5) in this manner, which might permit exclusive contracts only when there is little possibility such contracts will exist?

70. To the extent we establish a process whereby a cable operator or

[19] We note that the Commission sought comment on a similar proposal in the *2007 Program Access NPRM. See Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* MB Docket No. 07–198, Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17859, para. 114 (2007) (seeking comment on whether the Commission can establish a procedure that would shorten the term of the exclusive contract prohibition if, after two years (*i.e.,* October 5, 2009), a cable operator can show competition from new entrant MVPDs has reached a certain penetration level in the DMA) (''*2007 Program Access NPRM''*). We hereby incorporate by reference the comments filed in response to this proposal.

satellite-delivered, cable-affiliated programmer can petition to remove the exclusive contract prohibition on a market-by-market basis, we seek comment on the details of this process. First, in assessing whether to sunset the exclusive contract prohibition in an individual market, we propose to apply the same test set forth in Section 628(c)(5)—*i.e.,* whether the prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' Who should bear the burdens of production and persuasion in demonstrating that the exclusive contract prohibition either does or does not meet this test in an individual market? While a petitioner (in this case, the cable operator or satellite-delivered, cable-affiliated programmer) might normally bear these burdens, Congress established that the exclusive contract prohibition would sunset unless it continues to be necessary pursuant to this test. The Commission has explained that Section 628(c)(5) thus ''creates a presumption that the rule will sunset'' unless it continues to be necessary. Does this call for a regime where, in response to a petition seeking to remove the prohibition in an individual market, the burden of production shifts to competitive MVPDs and other interested parties to put forth evidence demonstrating that the prohibition continues to be necessary? To provide guidance to impacted parties, should we establish a specific benchmark which, if met, would establish a rebuttable presumption that the market is not sufficiently competitive to allow the exclusive contract prohibition to sunset? For example, should the market be rebuttably presumed to not be sufficiently competitive to allow the exclusive contract prohibition to sunset if the market share held by competitive MVPDs is below a certain threshold or television households passed by a vertically integrated cable operator is above a certain threshold? We ask commenters to provide support for any proposed threshold. Should we instead apply the test set forth in Section 628(c)(5) on an entirely case-by-case basis, considering all of the facts and circumstances presented, without establishing a specific benchmark? Second, how should we define the ''market'' for purposes of these petitions? Should we establish a specific market size for purpose of the petitions (such as DMA, county, or franchise area) or should we allow petitioners to seek a sunset of the exclusive contract prohibition for any size market they choose? Third, we seek comment on procedural deadlines. Given the likely fact-intensive nature of these petitions, we propose to establish a pleading cycle that is identical to the one established for complaints involving terrestrially delivered, cable-affiliated programming. Specifically, we propose to establish a 45-day opposition period and a 15-day reply period. Fourth, to the extent that the exclusive contract prohibition has not been removed in an individual market, we propose to retain our existing rules and procedures whereby a cable operator or a satellite-delivered, cable-affiliated programmer can seek prior Commission approval to enter into an exclusive contract by demonstrating that the arrangement satisfies the factors set forth in Section 628(c)(4) of the Act and Section 76.1002(c)(4) of the Commission's rules. Fifth, we seek comment on whether to adopt a sunset date for the exclusive contract prohibition, thereby eliminating the need for further market-based petitions, subject to a review by the Commission in the year prior to the sunset date. Should the sunset date be five years from the current sunset date (i.e., until October 5, 2017), consistent with the two prior five-year extensions?

71. We also seek comment on the practical effect of sunsetting the exclusive contract prohibition on a market-by-market basis. For example, to the extent that certain competitive MVPDs, such as DBS providers, market their service on a nationwide basis, how will the sunset of the exclusive contract prohibition in individual markets impact their marketing efforts? For example, if a certain satellite-delivered, cable-affiliated programming network is available to DBS customers in some markets, but not in others due to exclusive contracts with cable operators, how burdensome will it be for DBS providers to inform subscribers and potential customers of the limited availability of this programming and to implement the selective availability of the programming? In addition to this potential concern, we seek comment on the other costs and benefits of moving from a broad, prophylactic prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming throughout the nation to reliance instead on a market-by-market assessment.

(ii) Retaining an Exclusive Contract Prohibition for Satellite-Delivered, Cable-Affiliated RSNs and Other Satellite-Delivered, Cable-Affiliated ''Must Have'' Programming

72. We seek comment on whether we should retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming. The Commission has previously explained that RSNs have no good substitutes, are important for competition, and are non-replicable. Moreover, in his dissenting opinion to the D.C. Circuit decision affirming the *2007 Extension Order,* Judge Kavanaugh articulated the following explanation for why a ban on exclusive contracts for RSNs may be appropriate:

> I would leave open the possibility that the Government might still impose a prospective ban on some exclusive agreements between video programming distributors and affiliated regional video programming networks, particularly regional sports networks. That is because the upstream market in which video programming distributors contract with regional networks is less competitive than the national market * * *. [M]arket share and other relevant factors in certain areas may dictate tolerance of a narrow exclusivity ban. Situations where a highly desirable ''must have'' regional sports network is controlled by one video programming distributor might justify a targeted restraint on such regional exclusivity arrangements. I need not definitively address such a possibility in this case.

73. We note, however, that the Commission in the *2010 Program Access Order* declined to adopt a flat ban on exclusive contracts involving terrestrially delivered, cable-affiliated RSNs pursuant to Section 628(b) of the Act. Noting empirical evidence that withholding of an RSN in one case did not have an impact on competition, the Commission declined to adopt a general conclusion regarding RSNs, adopting instead a case-by-case approach, albeit with a rebuttable presumption that an ''unfair act'' involving a terrestrially delivered, cable-affiliated RSN has the purpose or effect set forth in Section 628(b). The Commission explained that ''case-by-case consideration of the impact on competition in the video distribution market is necessary to address whether unfair practices significantly hinder competition in particular cases.''

74. Are there legal and/or policy reasons why the Commission may want to establish a case-by-case approach for assessing exclusive contracts involving terrestrially delivered, cable-affiliated RSNs, but to retain an across-the-board prohibition on exclusive contracts involving satellite-delivered, cable-affiliated RSNs? We note that, in adopting a case-by-case approach for terrestrially delivered, cable-affiliated RSNs, the Commission was applying and interpreting Section 628(b) of the Act, which prohibits ''unfair acts'' that have the ''purpose or effect'' to ''significantly hinder or prevent'' an

MVPD from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. In considering a sunset of the exclusive contract prohibition, however, we are applying and interpreting Section 628(c)(5) of the Act, which requires the Commission to determine whether the exclusive contract prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' Unlike Section 628(b), the language in Section 628(c)(5) does not require the Commission to assess whether particular exclusive contracts are ''unfair'' or whether they have the ''purpose or effect'' to ''significantly hinder or prevent'' an MVPD from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. We note that two vertically integrated cable operators, Comcast and Cablevision, previously stated before the D.C. Circuit that a partial sunset of the exclusive contract prohibition is a legally permissible approach, explaining that ''Section 628(c)(5) grants the FCC additional sunsetting authority, and nothing in the statute suggests that the FCC must do so on an all-or-nothing basis.'' Does this difference in statutory language provide a basis for treating satellite-delivered, cable-affiliated RSNs differently from terrestrially delivered, cable-affiliated RSNs? In addition, are there policy reasons why the Commission may want to retain the exclusivity ban as it applies to satellite-delivered, cable-affiliated RSNs? If so, we propose to define the term ''RSN'' in the same way the Commission defined that term in the *2010 Program Access Order.*

75. To the extent we retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs, we propose to retain our existing rules and procedures whereby a cable operator or a satellite-delivered, cable-affiliated programmer can file a Petition for Exclusivity seeking prior Commission approval to enter into an exclusive contract by demonstrating that the arrangement satisfies the factors set forth in Section 628(c)(4) of the Act and Section 76.1002(c)(4) of the Commission's rules. We seek comment on whether this process is sufficient for addressing those instances where an exclusive contract pertaining to a satellite-delivered, cable-affiliated RSN might serve the public interest. We note that, if we were to retain an exclusive contract prohibition for only satellite-delivered, cable-affiliated RSNs, our rules would apply burdens to different parties depending on whether or not the programming subject to an exclusive contract is an RSN: (i) In the case of satellite-delivered, cable-affiliated RSNs, exclusive contracts with cable operators would be generally prohibited, unless a cable operator or RSN can satisfy its burden of demonstrating that an exclusive contract serves the public interest based on the factors set forth in Section 628(c)(4) of the Act and Section 76.1002(c)(4) of the Commission's rules; and (ii) in the case of all other satellite-delivered, cable-affiliated programming, exclusive contracts with cable operators would be generally permitted, unless an MVPD can satisfy its burden of demonstrating that the exclusive contract violates Section 628(b) of the Act and Section 76.1001(a) of the Commission's rules (or, potentially, Section 628(c)(2)(B) of the Act and Section 76.1002(b) of the Commission's rules). Given the Commission precedent and relevant historical evidence pertaining to the importance of RSNs for competition, as well as their non-substitutability and non-replicability, we believe there is a sufficient basis for drawing this distinction between RSN and non-RSN programming. We seek comment on this view.

76. Are there any other categories of satellite-delivered, cable-affiliated programming besides RSNs that can be deemed ''must have'' and for which we should retain the exclusivity prohibition? We note that the Commission in the *Comcast-NBCU Order* concluded that ''certain national cable programming networks produce programming that is more widely viewed and commands higher advertising revenue than certain broadcast or RSN programming.'' Are there other types of satellite-delivered, cable-affiliated programming besides RSNs that have no good substitutes, are important for competition, and are non-replicable, as the Commission has found with respect to RSNs? To the extent that commenters contend that there are, we ask that they provide reliable, empirical data supporting their positions, rather than merely labeling such programming as ''must have.'' In addition, we request commenters to provide a rational and workable definition of such programming that can be applied objectively. We note that in the *2007 Extension Order* the Commission declined to differentiate between categories of programming for purposes of the exclusive contract prohibition for a number of legal and policy reasons.[20] We seek comment on whether any of the concerns the Commission expressed in the *2007 Extension Order* should prevent us from retaining an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs, or potentially other satellite-delivered, cable-affiliated ''must have'' programming, given the state of the market today.

77. With respect to First Amendment concerns, we note that the Commission in the *2010 Program Access Order* applied a rebuttable presumption of significant hindrance to one category of programming—terrestrially delivered, cable-affiliated RSNs. The D.C. Circuit rejected claims that this was a content-based restriction on speech subject to strict scrutiny, explaining that:

> [T]here is absolutely no evidence, nor even any serious suggestion, that the Commission issued its regulations to disfavor certain messages or ideas. The clear and undisputed evidence shows that the Commission established presumptions for RSN programming due to that programming's economic characteristics, not to its communicative impact. Thus content-neutral, the presumptions are subject only to intermediate scrutiny.

In applying intermediate scrutiny, the D.C. Circuit ruled that, ''[g]iven record evidence demonstrating the significant impact of RSN programming withholding, the Commission's presumptions represent a narrowly tailored effort to further the important governmental interest of increasing competition in video programming.'' Based on the D.C. Circuit's decision, we do not believe that retaining an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs

[20] These reasons were as follows: (i) Congress did not distinguish between different types of satellite-delivered, cable-affiliated programming in adopting the exclusive contract prohibition in Section 628(c)(2)(D) (*see 2007 Extension Order,* 22 FCC Rcd at 17839–40, para. 69; *see also 2002 Extension Order,* 17 FCC Rcd at 12156, para. 69); (ii) requests to relieve satellite-delivered, cable-affiliated programming networks from the exclusive contract prohibition can be addressed through individual exclusivity petitions satisfying the factors set forth in Section 628(c)(4) (*see 2007 Extension Order,* 22 FCC Rcd at 17839–40, para. 69); (iii) no commenter provided a rational and workable definition of ''must have'' programming that would allow the Commission to apply the exclusive contract prohibition to only this type of programming (*see id.*); (iv) the difficulty of developing an objective process of general applicability to determine what programming may or may not be essential to preserve and protect competition (*see id.; see also 2002 Extension Order,* 17 FCC Rcd at 12156, para. 69); and (v) distinguishing between different types of satellite-delivered, cable-affiliated programming might raise First Amendment concerns (*see 2007 Extension Order,* 22 FCC Rcd at 17839–40, para. 69; *see also 2002 Extension Order,* 17 FCC Rcd at 12156, para. 69).

and other satellite-delivered, cable-affiliated ''must have'' programming would run afoul of the First Amendment. We seek comment on this view.

78. To the extent we retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming, we propose to apply the prohibition independently to the SD and HD versions of the same network. As discussed above, the Commission has concluded that HD programming is growing in significance to consumers and that consumers do not consider the SD version of a particular channel to be an adequate substitute for the HD version due to the different technical characteristics and sometimes different content. Accordingly, the Commission has determined that it will analyze the HD version of a network separately from the SD version with similar content for purposes of determining whether an ''unfair act'' has the purpose or effect set forth in Section 628(b). Because this same finding would appear to apply to an exclusive contract prohibition, we propose that, if a satellite-delivered, cable-affiliated programmer makes the SD version of an RSN or other ''must have'' programming available to MVPDs, this would not exempt the satellite-delivered, HD version of the RSN or other ''must have'' programming from the exclusive contract prohibition. We seek comment on this view.

79. To the extent we retain an exclusive contract prohibition pursuant to Section 628(c)(5) only for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming, should we adopt a date when this prohibition will sunset, subject to a review by the Commission in the year prior to the sunset date? Should the sunset date be five years from the current sunset date (i.e., until October 5, 2017), consistent with the two prior five-year extensions?

80. Should we combine the two approaches to partial sunsetting of the exclusive contract prohibition, by adopting a market-by-market approach and also retaining the prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming? If so, how should the two approaches interrelate? If the exclusive contract prohibition sunsets in a specific market, should this sunset also apply to satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming? Or, given the critical nature of RSNs and other ''must have'' programming for competition, should the exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming continue to apply even if the exclusive contract prohibition sunsets for other satellite-delivered, cable-affiliated programming in the market? Should the Commission instead assess whether the exclusive contract prohibition should continue to apply to satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming on a market-by-market basis, considering all of the facts and circumstances presented in the petition?

5. Implementation of a Sunset in a Manner That Minimizes Any Potential Disruption for Consumers

81. Whether we retain, sunset, or relax the exclusive contract prohibition, our goal is protect consumers and minimize any potential disruption. As an initial matter, as noted above, many Comcast-affiliated networks are subject to program access conditions adopted in the *Comcast/NBCU Order* and will continue to be subject to these conditions for six more years (until January 2018, assuming they are not modified earlier in response to a petition). These networks will not be impacted by a sunset (complete or partial). With respect to other satellite-delivered, cable-affiliated networks, we seek comment below on how sunsetting the exclusive contract prohibition (wholly or partially) will impact consumers, and whether a phased implementation of a sunset is necessary to minimize any potential disruption to consumers. As discussed above, to the extent the data do not support retaining the exclusive contract prohibition as it exists today, we seek comment above on sunsetting or relaxing the prohibition. To the extent the prohibition sunsets (wholly or partially), we envision that there are at least two possible scenarios with respect to existing affiliation agreements. We seek comment on which scenario is more likely and if there are any other likely scenarios. First, if the exclusive contract prohibition were to sunset, an existing affiliation agreement between a cable-affiliated programmer and an MVPD pertaining to a satellite-delivered, cable-affiliated programming network might allow the programmer to terminate or modify the existing agreement immediately on the effective date of the sunset and to instead enter into an exclusive contract with a cable operator. Second, even if the exclusive contract prohibition were to sunset, an existing affiliation agreement might require the satellite-delivered, cable-affiliated programmer to continue to provide the programming to the MVPD for the duration of the term of the affiliation agreement despite the sunset. We seek comment on these alternative scenarios below.

a. Termination or Modification of Affiliation Agreements on the Effective Date of the Sunset

82. To the extent that existing affiliation agreements permit satellite-delivered, cable-affiliated programmers to terminate or modify the agreements immediately on the effective date of the sunset and to instead enter into an exclusive contract with a cable operator, is there any basis to expect that many satellite-delivered, cable-affiliated programmers would terminate or modify existing agreements simultaneously and thereby cause significant disruption to consumers by depriving them of programming they have come to expect? Are our existing rules sufficient to prevent any customer disruption? For example, to the extent that a cable-affiliated programmer terminates or modifies an existing affiliation agreement with an MVPD pertaining to a satellite-delivered, cable-affiliated programming network and instead enters into an exclusive arrangement with a cable operator, the MVPD could file a complaint alleging a violation of Section 628(b) of the Act (and, potentially, Section 628(c)(2)(B) of the Act). While our program access rules contain specific procedures for the filing of a petition for a standstill along with a program access complaint when seeking to renew an existing affiliation agreement, should our standstill procedures also apply when an MVPD files a program access complaint based on a satellite-delivered, cable-affiliated programmer's mid-term termination or modification of an affiliation agreement resulting from the sunset? If the standstill petition is granted, the price, terms, and other conditions of the existing affiliation agreement will remain in place pending resolution of the program access complaint, thereby reducing consumer disruption.

83. Rather than relying on the complaint and standstill process, should we instead abrogate provisions of affiliation agreements that would allow satellite-delivered, cable-affiliated programmers to terminate or modify their existing agreements with MVPDs immediately on the effective date of the sunset? We seek comment regarding the benefits and burdens of abrogating contractual provisions that otherwise would permit a programmer to terminate or modify its existing agreement with an unaffiliated MVPD

immediately upon sunset of the exclusive contract prohibition. We seek comment regarding how the abrogation of such contractual provisions would be congruous with a possible finding to sunset the exclusive contract prohibition. In *NCTA* v. *FCC,* the D.C. Circuit upheld the Commission's abrogation of existing contracts in the program access context. Alternatively, to minimize any potential disruption to consumers, should we adopt a phased implementation of the sunset? For example, should we provide that, for a period of three years from the sunset date, a cable-affiliated programmer cannot enter into an exclusive contract with a cable operator for a satellite-delivered, cable-affiliated programming network that is an RSN (assuming the prohibition is not retained for RSNs) or is ranked within the Top 20 cable networks as measured by either prime time ratings, average all-day ratings, or total number of subscribers? Should we adopt a similar restriction, for a period of two years from the sunset date, for a satellite-delivered, cable-affiliated programming network that is ranked within the Top 21–50 cable networks? We seek comment on these proposals and any other appropriate ways to minimize any disruption to consumers resulting from the sunset in the event that existing affiliation agreements permit satellite-delivered, cable-affiliated programmers to terminate or modify them on the effective date of the sunset.

b. Continued Enforcement of Existing Affiliation Agreements Despite the Sunset

84. To the extent that existing affiliation agreements require cable-affiliated programmers to continue to provide satellite-delivered, cable-affiliated programming networks to MVPDs for the duration of the term of the existing agreement despite the sunset of the exclusive contract prohibition, we seek comment on the interplay between the sunset and the discrimination provision of the program access rules. For example, assume that a cable-affiliated programmer has existing affiliation agreements for a satellite-delivered, cable-affiliated programming network with three MVPDs (including one cable operator) subject to the following termination dates: December 31, 2012 (cable operator); December 31, 2013 (MVPD A); December 31, 2014 (MVPD B). If the satellite-delivered, cable-affiliated programmer enters into an exclusive contract with the cable operator after its current agreement expires on December 31, 2012, would the satellite-delivered, cable-affiliated programmer be required to make the programming available to all MVPDs until after the expiration of the latest-expiring affiliation agreement with an MVPD other than the cable operator that is a party to the exclusive contract? We seek comment on whether it would be impermissibly discriminatory in violation of Section 628(c)(2)(B) if the satellite-delivered, cable-affiliated programmer were to refuse to license the network to MVPD A after December 31, 2013, while continuing to provide the programming to MVPD B until its agreement expires on December 31, 2014, based on the future enforcement of an exclusive contract with the cable operator as of January 1, 2015, after the expiration of the agreement with MVPD B. While the satellite-delivered, cable-affiliated programmer's discriminatory treatment of MVPD A relative to MVPD B and the cable operator during the period of December 31, 2013 to December 31, 2014 might be justified based on a legitimate business reason, is the future enforcement of an exclusive contract a legitimate business reason for such discriminatory conduct? If not, then the satellite-delivered, cable-affiliated programmer would not be permitted to have the exclusivity period with the cable operator begin, or to refuse to license the programming to other MVPDs, until all affiliation agreements with other MVPDs expire. Thus, in this scenario, absent a legitimate business reason, the satellite-delivered, cable-affiliated programmer would be required to enter into an affiliation agreement with MVPD A that terminates no earlier than December 31, 2014 (i.e., the expiration of the latest-expiring affiliation agreement with an MVPD other than the cable operator that is a party to the exclusive contract). We seek comment on this view.

85. To the extent that affiliation agreements require cable-affiliated programmers to continue to provide satellite-delivered, cable-affiliated programming networks to MVPDs for the duration of the term of the existing agreement despite the sunset, does the anti-discrimination provision of Section 628(c)(2)(B) as described here prevent the enforcement of any exclusive contract until the expiration of the latest-expiring affiliation agreement with an MVPD other than the cable operator that is a party to the exclusive contract? Will this limit the immediate impact of the sunset (complete or partial) and help to minimize any potential disruption to consumers? What impact, if any, does Section 628(c)(2)(B)(iv) have on this discussion? Even if this section could be read to immunize post-sunset exclusive contracts from being challenged as impermissibly discriminatory in violation of Section 628(c)(2)(B), would this provision allow a satellite-delivered, cable-affiliated programmer to selectively refuse to license programming to certain MVPDs based on future enforcement of an exclusive contract, as described here?

6. First Amendment

86. We ask commenters to consider carefully how the First Amendment impacts our review of the exclusive contract prohibition, including the proposals to relax the prohibition. As the D.C. Circuit explained in rejecting a facial challenge to the constitutionality of the program access provisions, these provisions will survive intermediate scrutiny if they ''further[] an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.'' Given the current state of competition in the video programming market and the video distribution market, does the First Amendment require the exclusive contract prohibition as it exists today to sunset or to be relaxed? Is a prohibition on all exclusive contracts in all markets between cable operators and cable-affiliated programmers pertaining to satellite-delivered, cable-affiliated programming ''no greater than is essential'' to the furtherance of the substantial government interest in promoting competition in the MVPD market? Would retaining the prohibition only for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming, and/or allowing the prohibition to sunset on a market-by-market basis, be a sufficiently tailored approach?

87. We note that, in rejecting a facial First Amendment challenge to the *2010 Program Access Order* in which the Commission adopted a case-by-case approach for considering unfair acts involving terrestrially delivered, cable-affiliated programming, the D.C. Circuit explained that, ''[b]y imposing liability only when complainants demonstrate that a company's unfair act has 'the purpose or effect' of 'hinder[ing] significantly or * * * prevent[ing]' the provision of satellite programming, * * * the Commission's terrestrial programming rules specifically target activities where the governmental interest is greatest.'' Moreover, the D.C.

Circuit stated that the Commission, in adopting this case-by-case approach, ''has no obligation to establish that vertically integrated cable companies retain a stranglehold on competition nationally or that all withholding of terrestrially delivered programming negatively affects competition.'' Is a case-by-case approach pursuant to Section 628(b) (and, potentially, Section 628(c)(2)(B)) or a narrowed application of the exclusive contract prohibition as discussed above, rather than the current broad, prophylactic prohibition, preferable under the First Amendment given the competitive environment today? We also seek comment on the First Amendment implications of a phased implementation of a sunset as discussed above to minimize any potential disruption to consumers.

7. Costs and Benefits

88. In addition to the specific questions noted above, we ask commenters to consider generally the costs and benefits associated with either retaining, sunsetting, or relaxing the exclusive contract prohibition as described herein. We believe that retaining the exclusive contract prohibition in its entirety as it exists today will result in certain costs, such as unnecessarily restricting procompetitive arrangements that in certain instances may foster competition in the video distribution market and promote competition and diversity in the video programming market. While a case-by-case approach, either pursuant to a Section 628(b) complaint (and, potentially, a Section 628(c)(2)(B) complaint) or a market-based petition, will better enable the Commission to consider the unique facts and circumstances presented in each case, this approach will also result in certain costs by requiring the affected parties and the Commission to expend resources litigating and resolving the complaints and petitions. Retaining an exclusive contract prohibition for programming that is demonstrated to be important for competition, non-replicable, and without good substitutes (*i.e.,* satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming), may help to reduce these costs by eliminating the need to file complaints with respect to this class of programming. To the extent possible, we encourage commenters to quantify the costs and benefits of the different approaches to the exclusive contract prohibition as described herein. Which of the approaches would be most beneficial to the public? When would the public realize these benefits? Which of these approaches would be least burdensome?

8. Subdistribution Agreements

89. We seek comment on the impact of a sunset (complete or partial) of the exclusive contract prohibition on the Commission's rules pertaining to exclusive subdistribution agreements. The Commission's rules define a subdistribution agreement as ''an arrangement by which a local cable operator is given the right by a satellite cable programming vendor or satellite broadcast programming vendor to distribute the vendor's programming to competing multichannel video programming distributors.'' Based on the exclusive contract prohibition, the Commission in the *1993 Program Access Order* adopted certain restrictions on exclusive subdistribution agreements to ''address any incentives for a subdistributor to refuse to sell to a competing MVPD that may be inherent in such rights'' and to ensure ''appropriate safeguards to limit the potential for anticompetitive behavior.'' Specifically, a cable operator engaged in subdistribution (i) may not require a competing MVPD to purchase additional or unrelated programming as a condition of such subdistribution; (ii) may not require a competing MVPD to provide access to private property in exchange for access to programming; (iii) may not charge a competing MVPD more for programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge; and (iv) must respond to a request for access to such programming by a competing MVPD within fifteen (15) days of the request and, if the request is denied, the competing MVPD must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor. We propose to eliminate these restrictions to the extent the exclusive contract prohibition sunsets and seek comment on this proposal.

9. Common Carriers and Open Video Systems

90. The Commission's rules contain provisions pertaining to exclusive contracts involving common carriers and OVS in served areas that mirror the rules applicable to exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers in served areas. With respect to common carriers, these rules pertain to exclusive contracts between a satellite-delivered, common-carrier-affiliated programmer and a common carrier or its affiliate that provides video programming by any means directly to subscribers. With respect to OVS, these rules pertain to exclusive contracts (i) between a satellite-delivered, OVS-affiliated programmer and an OVS or its affiliate that provides video programming on its OVS; and (ii) between a satellite-delivered, cable-affiliated programmer and an OVS video programming provider in which a cable operator has an attributable interest. We propose that any amendments we adopt herein to our rules pertaining to exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers in served areas will apply equally to these rules pertaining to common carriers and OVS. We also propose to conform the rules pertaining to exclusive subdistribution agreements involving OVS to the rules applicable to cable operators and seek comment on this proposal.

10. Impact of a Sunset on Existing Merger Conditions

91. We believe that conditions adopted in two previous merger orders may be impacted if the exclusive contract prohibition were to sunset (wholly or partially). We seek comment on this impact below.

a. *Adelphia Order* Merger Conditions

92. Pursuant to merger conditions adopted in the *Adelphia Order,* certain terrestrially delivered RSNs (''Covered RSNs'') affiliated with TWC are currently required to comply with the program access rules applicable to satellite-delivered, cable-affiliated programming, including the exclusive contract prohibition.[21] Among other

[21] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., Assignees, et al.,* Memorandum Opinion and Order, 21 FCC Rcd 8203, 8274, paras. 156–157 (2006) (''Adelphia Order'') (requiring terrestrially delivered RSNs in which Time Warner has or acquires an attributable interest to comply with the program access rules applicable to satellite-delivered, cable-affiliated programming, citing 47 CFR 76.1002), 8276, para. 162, and 8336, Appendix B, sec. B.1 (citing 47 CFR 76.1002); *see also Time Warner Order,* 24 FCC Rcd at 893, para. 26 (approving transaction separating Time Warner from TWC and explaining that the *Adelphia Order* program access conditions will continue to apply to TWC post-restructuring but will no longer apply to Time Warner). An RSN as defined in the *Adelphia Order* is ''any non-broadcast video programming service that (1) provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball and (2) in any year, carries a minimum of either 100 hours of programming that meets the criteria of subheading 1, or 10% of the regular season games of at least one sports team that meets the criteria of subheading 1.'' *Adelphia Order,* 21 FCC Rcd at

things, the conditions state as follows with respect to exclusivity (the ''exclusivity conditions''):

(i) ''Time Warner [Cable], and [its] existing or future Covered RSNs, regardless of the means of delivery, shall not offer any such RSN on an exclusive basis to any MVPD, and * * * Time Warner [Cable], and [its] Covered RSNs, regardless of the means of delivery, are required to make such RSNs available to all MVPDs on a non-exclusive basis * * *'';

(ii) ''Time Warner [Cable] will not enter into an exclusive distribution arrangement with any such Covered RSN, regardless of the means of delivery''; and

(iii) ''Th[is] exclusive contracts and practices * * * requirement of the program access rules will apply to Time Warner [Cable] and [its] Covered RSNs for six years, provided that if the program access rules are modified this condition shall be modified to conform to any revised rules adopted by the Commission.''

93. These conditions are scheduled to expire in July 2012. Depending on whether and how we revise the exclusive contract prohibition, and if we do so before these conditions expire, we may need to modify these exclusivity conditions to conform to our revised rules. We envision four alternative scenarios. First, to the extent that we retain the exclusive contract prohibition in its entirety as it exists today, including for RSNs, there will be no need to modify the exclusivity conditions because the program access rules will remain the same. Second, to the extent that we retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming only, there will be no need to modify the exclusivity conditions because the exclusive contract prohibition will remain the same with respect to RSNs. Third, to the extent we establish a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can seek to remove the exclusive contract prohibition on a market-by-market basis, and grant of such a petition includes RSNs, then we would expect to modify the exclusivity conditions to provide that Covered RSNs in markets covered by such a petition (if granted) will no longer be subject to these exclusivity conditions. If the grant of such a petition does not include RSNs, however, there will be no need to modify the exclusivity conditions because the exclusive contract prohibition will remain the same with respect to RSNs. Fourth, to the extent we sunset the exclusive contract prohibition in its entirety, including for RSNs, then we would expect to modify the exclusivity conditions to provide that Covered RSNs will no longer be subject to these exclusivity conditions; rather, exclusive contracts for Covered RSNs may be assessed on a case-by-case basis in response to a program access complaint alleging a violation of Section 628(b) (and, potentially, Section 628(c)(2)(B)). We seek comment on this interpretation.

b. *Liberty Media Order* Merger Conditions

94. Pursuant to merger conditions adopted in the *Liberty Media Order,*[22] certain programmers affiliated with Liberty Media and DIRECTV are subject to the following conditions (the ''exclusivity conditions''), among others:

(i) ''Liberty Media shall not offer any of its existing or future national and regional programming services on an exclusive basis to any MVPD. Liberty Media shall continue to make such services available to all MVPDs on a non-exclusive basis * * *'';

(ii) ''DIRECTV will not enter into an exclusive distribution arrangement with any Affiliated Program Rights Holder.'';

(iii) ''As long as Liberty Media holds an attributable interest in DIRECTV, DIRECTV will deal with any Affiliated Program Rights Holder with respect to programming services the Affiliated Program Rights Holder controls as a vertically integrated programmer subject to the program access rules.'';

(iv) ''These conditions will apply to Liberty Media, DIRECTV, and any Affiliated Program Rights Holder until the later of a determination by the Commission that Liberty Media no longer holds an attributable interest in DIRECTV or the Commission's program access rules no longer remain in effect (provided that if the program access rules are modified these commitments shall be modified, as the Commission deems appropriate, to conform to any revised rules adopted by the Commission).''

95. These particular *Liberty Media Order* conditions differ from similar conditions in the *Adelphia Order* in that (i) they apply not only to RSNs, but to both national and regional programming services; and (ii) they do not expire after the passage of a certain period of time. Depending on whether and how we revise the exclusive contract prohibition of the program access rules, we may need to modify these exclusivity conditions to conform to our revised rules. First, to the extent that we retain the exclusive contract prohibition in its entirety as it exists today, there will be no need to modify the exclusivity conditions because the program access rules will remain the same. Second, to the extent that we retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming only, there will be no need to modify the exclusivity conditions with respect to RSNs and other ''must have'' programming because the exclusive contract prohibition will remain the same with respect to such programming. With respect to non-RSN programming and other programming that is not deemed ''must have,'' however, we would expect to modify the exclusivity conditions to provide that exclusive contracts involving such programming will no longer be prohibited. To the extent any covered non-RSN/non-''must have'' programming is cable-affiliated, however, exclusive contracts may be assessed on a case-by-case basis in response to a program access complaint alleging a violation of Section 628(b) (and, potentially, Section 628(c)(2)(B)). Third, to the extent we establish a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can seek to remove the exclusive contract prohibition on a market-by-market basis, and grant of such a petition includes satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming, then we would expect to modify the exclusivity conditions to provide that exclusive contracts in markets covered by such a petition (if granted) will not be prohibited under these conditions. If the grant of such a petition does not include satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming, however, there will be no need to modify the exclusivity conditions with respect to RSNs and other ''must have'' programming because the exclusive contract prohibition will remain the same with respect to such programming. Fourth, to the extent we sunset the exclusive contract prohibition in its entirety, including for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated

8336, Appendix B, sec. A. While these conditions originally applied to Comcast as well, they were superseded by the *Comcast/NBCU Order. See Comcast/NBCU Order,* 26 FCC Rcd at 4364, Appendix A, Condition VI.

[22] *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, News Corporation. and The DIRECTV Group, Inc., Transferors, to Liberty Media Corporation., Transferee,* Memorandum Opinion and Order, 23 FCC Rcd 3265 (2008) (''*Liberty Media Order*''). The conditions state that the term ''Liberty Media'' includes ''any entity or program rights holder in which Liberty Media or John Malone holds an attributable interest. Thus, the term 'Liberty Media' includes Discovery Communications.'' *Id.* at 3340–41 n.3. Moreover, the conditions provide that ''Liberty Media and DIRECTV are prohibited from acquiring an attributable interest in any non-broadcast national or regional programming service while these conditions are in effect if the programming service is not obligated to abide by such conditions.'' *Id.*

''must have'' programming, then we would expect to modify the exclusivity conditions to provide that exclusive contracts will not be prohibited. Again, however, to the extent any of the covered programming is cable-affiliated, exclusive contracts will be assessed on a case-by-case basis in response to a program access complaint alleging a violation of Section 628(b) (and, potentially, Section 628(c)(2)(B)). We seek comment on this interpretation.[23]

B. Potential Revisions to the Program Access Rules To Better Address Alleged Violations

96. The Commission initially adopted its program access rules in 1993. Other than the previous extensions of the exclusive contract prohibition and certain procedural changes, including the adoption of a process for the award of damages, establishing aspirational deadlines for the processing of complaints, and implementing party-to-party discovery, these rules have remained largely unchanged since this time. We seek comment on how our rules can be improved, especially in light of marketplace developments and commenters' experience with these rules over the past two decades.

1. Procedural Rules

97. As an initial matter, while our program access procedural rules provide a defendant with 20 days after service of a complaint to file an answer, the Commission has provided defendants with 45 days from the date of service to file an answer to a Section 628(b) complaint alleging an ''unfair act'' involving terrestrially delivered, cable-affiliated programming to ensure that the defendant has adequate time to develop a response. The Commission explained that additional time was appropriate because, unlike complaints alleging a violation of the prohibitions in Section 628(c), a complaint alleging a violation of Section 628(b) entails additional factual inquiries, including whether the allegedly ''unfair act'' at issue has the purpose or effect set forth in Section 628(b). To the extent the exclusive contract prohibition were to sunset (wholly or partially), we propose to adopt the same 45-day answer period in complaint proceedings alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates Section 628(b). We seek comment on this proposal. Because all complaints alleging a violation of Section 628(b) will involve the claim that the conduct at issue has the purpose or effect set forth in Section 628(b), we propose to amend our rules to provide for a 45-day answer period for all complaints alleging a violation of Section 628(b). We seek comment on this proposal. Are there any other changes we should make to our program access procedural rules to accommodate the case-by-case consideration of exclusive contracts involving satellite-delivered, cable-affiliated programming under Section 628(b)?

2. Volume Discounts

98. We also seek comment on whether our program access rules adequately address potentially discriminatory volume discounts and, if not, how these rules should be revised to address these concerns. Some MVPDs have expressed concern that cable-affiliated programmers charge larger MVPDs less for programming on a per-subscriber basis than smaller MVPDs due to volume discounts, which are based on the number of subscribers the MVPD serves. As a result, smaller MVPDs claim that they are placed at a significant cost disadvantage relative to larger MVPDs. Some commenters have claimed that this price differential is not cost-based because program production and acquisition costs are sunk; delivery costs do not vary; and administrative costs are not different. According to some commenters, without a basis in cost, this wholesale practice amounts to price discrimination.

99. The anti-discrimination provision in Section 628(c)(2)(B) of the Act provides that it is not impermissibly discriminatory for a satellite-delivered, cable-affiliated programmer to ''establish[] different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor.'' The Commission's rules provide that:

> Vendors may use volume-related justifications to establish price differentials to the extent that such justifications are made available to similarly situated distributors on a technology-neutral basis. When relying upon standardized volume-related factors that are made available to all multichannel video programming distributors using all technologies, the vendor may be required to demonstrate that such volume discounts are reasonably related to direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor if questions arise about the application of that discount. In such demonstrations, vendors will not be required to provide a strict cost justification for the structure of such standard volume-related factors, but may also identify non-cost economic benefits related to increased viewership.

Thus, the Commission's rules contemplate that an MVPD may file a program access complaint challenging volume-based pricing in certain circumstances. In the *Comcast/NBCU Order,* the Commission declined to adopt a condition that would prohibit Comcast-NBCU from offering volume-based discounts for its video programming, finding such a prohibition to be unnecessary because ''the specific matter of volume-based discounts is adequately addressed by the Commission's program access rules.''

100. Despite the concerns expressed by some MVPDs regarding allegedly discriminatory volume discounts and the availability of the existing complaint process, the Commission has not received program access complaints alleging that particular volume discounts violate Section 628(c)(2)(B) of the Act. We seek information about specific instances of perceived volume discount discrimination, along with explanations of why the alleged conduct amounts to a violation of the Commission's rules. We seek comment on the reasons for the lack of program access complaints alleging discriminatory volume discounts, despite the apparent concern among some MVPDs regarding this issue. Do our current program access rules and procedures prevent or discourage the filing of legitimate complaints pertaining to this issue? Is the complaint process too costly and time-consuming with respect to complaints alleging price discrimination? If so, we seek comment on how we might improve our rules and procedures to avoid impeding the filing of legitimate complaints. Are there procedural tools we might use, such as establishing rebuttable presumptions, that will expedite the complaint process while ensuring fairness to all parties? While the Commission has stated that satellite-delivered, cable-affiliated programmers may justify volume discounts based on ''non-cost economic benefits'' related to

[23] In contrast to the *Adelphia Order* and the *Liberty Media Order,* there is no provision in the *Comcast/NBCU Order* requiring the conditions adopted therein to be modified to conform to changes the Commission makes to the program access rules. *See Comcast/NBCU Order,* 26 FCC Rcd at 4381, Appendix A, Condition XX (stating that the conditions will remain in effect for seven years, provided that the Commission will consider a petition from Comcast/NBCU for modification of a condition if they can demonstrate that there has been a material change in circumstances, or that the condition has proven unduly burdensome, such that the Condition is no longer necessary in the public interest). Accordingly, the conditions adopted in the *Comcast/NBCU Order* will not be affected by the rule changes adopted in this proceeding.

increased viewership, it has not defined these benefits in the rules. Should we continue to consider ''non-cost economic benefits'' on a case-by-case basis due to the various factors, such as advertising and online and VOD offerings, that can be considered in setting prices? Should our rules specifically list those ''non-cost economic benefits'' related to increased viewership that might justify volume discounts? If so, what non-cost economic benefits should be identified? Should these benefits be limited to increased advertising revenues resulting from increased viewership? Should satellite-delivered, cable-affiliated programmers be required to demonstrate in response to a complaint the increase in advertising revenues resulting from licensing programming to a larger MVPD and how this increase justifies the volume discount provided to the larger MVPD relative to the complainant?

3. Uniform Price Increases

101. We also seek comment on whether and how we should revise our rules to address uniform price increases imposed by satellite-delivered, cable-affiliated programmers. In previous merger decisions, the Commission has discussed the possibility that a vertically integrated cable operator could disadvantage its competitors in the video distribution market by raising the price of a network to all distributors (including itself) to a level greater than that which would be charged by a non-vertically integrated supplier. The Commission explained that a vertically integrated cable operator might employ such a strategy to raise its rivals' costs. Because rival MVPDs would have to pay more for the programming, they would likely respond either by raising their prices to subscribers, not purchasing the programming, or reducing marketing activities. The vertically integrated cable operator could then enjoy a competitive advantage, because the higher price for the programming that it would pay would be an internal transfer that it could disregard when it sets its own prices. By forcing its competitors either to pay more for the programming and increase their retail rates, or forgo purchasing the programming, the vertically integrated cable operator could raise its prices to some extent without losing subscribers. The Commission has also stated that this strategy of uniform price increases does not necessarily violate the anti-discrimination provision of the program access rules because the price increases would be applied to all distributors equally and thus does not involve discriminatory conduct. In previous merger orders, the Commission has sought to address this issue by adopting a baseball-style arbitration remedy to maintain the pre-integration balance of bargaining power between vertically integrated programming networks and rival MVPDs.

102. We seek comment on whether and how we should revise our rules to address uniform price increases imposed by satellite-delivered, cable-affiliated programmers. We also seek comment on actual experiences of discriminatory uniform price increases. Is there any basis to interpret the anti-discrimination provision in Section 628(c)(2)(B) as applying to uniform price increases? We note that, in employment law, a practice that appears facially neutral may nonetheless be discriminatory if it has a disparate impact on a certain class. While a uniform price increase appears facially neutral in that it applies to all MVPDs equally, it has a disparate impact on MVPDs that are not affiliated with the cable-affiliated programmer because the price increase is not merely an internal transfer for unaffiliated MVPDs. To the extent that a uniform price increase is not covered by the anti-discrimination provision in Section 628(c)(2)(B), can it be addressed on a case-by-case basis in a Section 628(b) complaint alleging that a uniform price increase is an ''unfair act'' that has the ''purpose or effect'' of ''significantly hindering or preventing'' an MVPD from providing satellite cable programming or satellite broadcast programming to subscribers or consumers? To the extent that a uniform price increase is actionable under Section 628(c)(2)(B) or Section 628(b), how can we distinguish an anticompetitive uniform price increase intended to raise rivals' costs from a price increase dictated by the market?

IV. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

103. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (''*NPRM*''). Written public 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 *NPRM* specified *supra*. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rule Changes

104. We issue the *NPRM* to seek comment on (i) whether to retain, sunset, or relax one of the several protections afforded to multichannel video programming distributors (''MVPDs'') by the program access rules—the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming; and (ii) potential revisions to our program access rules to better address alleged violations, including potentially discriminatory volume discounts and uniform price increases.

105. In areas served by a cable operator, Section 628(c)(2)(D) of the Communications Act of 1934, as amended (the ''Act''), generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between any cable operator and any cable-affiliated programming vendor (the ''exclusive contract prohibition''). The exclusive contract prohibition applies to all satellite-delivered, cable-affiliated programming and presumes that an exclusive contract will cause competitive harm in every case, regardless of the type of programming at issue. The exclusive contract prohibition applies only to programming which is delivered via satellite; it does not apply to programming which is delivered via terrestrial facilities. In January 2010, the Commission adopted rules providing for the processing of complaints alleging that an ''unfair act'' involving terrestrially delivered, cable-affiliated programming violates Section 628(b) of the Act. Thus, while an exclusive contract involving satellite-delivered, cable-affiliated programming is generally prohibited, an exclusive contract involving terrestrially delivered, cable-affiliated programming is permitted unless the Commission finds in response to a complaint that it violates Section 628(b) of the Act.

106. In Section 628(c)(5) of the Act, Congress provided that the exclusive contract prohibition would cease to be effective on October 5, 2002, unless the Commission found that it ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' In June 2002, the Commission found that the exclusive contract prohibition continued to be necessary to preserve

and protect competition and diversity and retained the exclusive contract prohibition for five years, until October 5, 2007. The Commission provided that, during the year before the expiration of the five-year extension, it would conduct a second review to determine whether the exclusive contract prohibition continued to be necessary to preserve and protect competition and diversity in the distribution of video programming. After conducting such a review, the Commission in September 2007 concluded that the exclusive contract prohibition was still necessary, and it retained the prohibition for five more years, until October 5, 2012. The Commission again provided that, during the year before the expiration of the five-year extension, it would conduct a third review to determine whether the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

107. Accordingly, in this *NPRM,* we initiate the third review of the necessity of the exclusive contract prohibition. In the *NPRM,* we present certain data on the current state of competition in the video distribution market and the video programming market, and we invite commenters to submit more recent data or empirical analyses. We seek comment on whether current conditions in the video marketplace support retaining, sunsetting, or relaxing the exclusive contract prohibition. To the extent that the data do not support retaining the exclusive contract prohibition as it exists today, we seek comment on whether we can preserve and protect competition in the video distribution market by either:

- Sunsetting the exclusive contract prohibition in its entirety and instead relying solely on existing protections provided by the program access rules that will not sunset: (i) The case-by-case consideration of exclusive contracts pursuant to Section 628(b) of the Act; (ii) the prohibition on discrimination in Section 628(c)(2)(B) of the Act; and (iii) the prohibition on undue or improper influence in Section 628(c)(2)(A) of the Act; or
- Relaxing the exclusive contract prohibition by (i) establishing a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can seek to remove the prohibition on a market-by-market basis based on the extent of competition in the market; (ii) retaining the prohibition only for satellite-delivered, cable-affiliated Regional Sports Networks (''RSNs'') and any other satellite delivered, cable-affiliated programming that the record here establishes as being important for competition and non-replicable and having no good substitutes; and/or (iii) other ways commenters propose.

We seek comment also on (i) how to implement a sunset (complete or partial) to minimize any potential disruption to consumers; (ii) the First Amendment implications of the alternatives discussed herein; (iii) the costs and benefits of the alternatives discussed herein; and (iv) the impact of a sunset on existing merger conditions.

108. In addition, we seek comment in the *NPRM* on potential improvements to the program access rules to better address potential violations. With the exception of certain procedural revisions and the previous extensions of the exclusive contract prohibition, the program access rules have remained largely unchanged in the almost two decades since the Commission originally adopted them in 1993. We seek comment on, among other things, whether our rules adequately address potentially discriminatory volume discounts and uniform price increases and, if not, how these rules should be revised to address these concerns.

Legal Basis

109. The proposed action is authorized pursuant to Sections 4(i), 4(j), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 548.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

110. 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

111. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' 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. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.

112. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined above. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.

113. *Cable Companies and Systems.* The Commission has also 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 all but ten

cable operators nationwide 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 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

114. *Cable System Operators.* The Communications Act of 1934, as amended, 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 all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

115. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network). Each currently offers subscription services. DIRECTV and EchoStar each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

116. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

117. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of 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. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

118. *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, we estimate 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, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (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) received 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) received 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) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

119. 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, we estimate 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 has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

120. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons. 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 the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 1000 employees, and 15 firms had 1000 employees or more. Thus under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

121. *Open Video Systems.* 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. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small. In addition, we note that the Commission 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, at least some of the OVS operators may qualify as small entities.

122. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. * * * These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such firms having $15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 396 firms in this category that operated for the entire year. Of that number, 325 operated with annual revenues of $9,999,999 million dollars or less. Seventy-one (71) operated with annual revenues of between $10 million and $100 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

123. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. 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 local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

124. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. 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. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

125. *Competitive Local Exchange Carriers, 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. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small. 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.

126. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

127. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: All such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

128. Certain proposed rule changes discussed in the *NPRM* would affect reporting, recordkeeping, or other compliance requirements. First, even if the exclusive contract prohibition were to sunset (wholly or partially), the Commission recognizes that other existing protections will remain in effect. Namely, an MVPD would still have the option to file a complaint with the Commission alleging that an exclusive contract between a cable operator and a satellite-delivered, cable-affiliated programmer involving satellite-delivered, cable-affiliated programming is an unfair act in violation of Section 628(b) of the Act and Section 76.1001(a) of the Commission's rules. An MVPD may also have the option of filing a discrimination complaint under Section 628(c)(2)(B) of the Act, which would provide some protection for competitive MVPDs should the exclusive contract prohibition sunset (wholly or partially). Further, the *NPRM* seeks comment on the extent to which undue influence complaints under Section 628(c)(2)(A) may also provide some protection for competitive MVPDs should the exclusive contract prohibition sunset (wholly or partially). Second, rather than sunsetting the exclusive contract prohibition in its entirety, the Commission seeks comment on whether it should instead relax the exclusivity prohibition, such as by establishing a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can seek to remove the exclusive contract prohibition on a market-by-market basis based on the extent of competition in the market. The Commission seeks comment on the details of any such process for removing the exclusive contract prohibition on a market-by-market basis. Third, the Commission proposes to adopt a 45-day answer period in complaint proceedings alleging a violation of Section 628(b). Fourth, the *NPRM* seeks comment on how the Commission might improve its rules and procedures to avoid impeding the filing of legitimate complaints alleging that particular volume discounts violate Section 628(c)(2)(B) of the Act. Specifically, the Commission asks whether satellite-delivered, cable-affiliated programmers should be required to demonstrate in response to a complaint the increase in advertising revenues resulting from licensing programming to a larger MVPD and how this increase justifies the volume discount provided to the larger MVPD relative to the complaint.

Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

129. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for 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 small entities.

130. First, regarding the potential sunset or relaxation of the exclusive contract prohibition, the *NPRM* seeks

comment on what impact the retention of the exclusive contract prohibition has had on the general state of competition among MVPDs in the video distribution market. More specifically, the *NPRM* asks how a sunset or relaxation of the exclusive contract prohibition would affect competition in the video distribution market, and how a sunset or relaxation would affect the potential entry of new competitors in the market. The *NPRM* also seeks comment on how the current state of cable system clustering and cable market share in regional markets should affect the Commission's decision on whether to retain, sunset, or relax the exclusive contract prohibition. Further, it asks whether the current state of horizontal consolidation in the cable industry has increased or decreased incentives for anticompetitive foreclosure of access to vertically integrated programming. The *NPRM* asks whether competitive MVPDs have the resources to invest in creating their own video programming. Overall, the Commission's analysis is focused on whether the exclusive contract prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.''

131. Second, to the extent the exclusive contract prohibition were to sunset (wholly or partially), the *NPRM* seeks comment on ways to reduce burdens on both complainants and defendants in connection with complaints alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates Section 628(b) (or Section 628(c)(2)(B)) of the Act.

132. Third, regarding the potential changes to our procedural rules governing program access complaints, we find that the changes would benefit regulated entities, including those that are small entities. Specifically, small entities may benefit from the proposed lengthier 45-day period within which to file an answer. They may also benefit from rules addressing potentially discriminatory volume discounts and uniform price increases.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

133. None.

B. Paperwork Reduction Act

134. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Ex Parte Rules

135. *Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

136. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 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'').

- *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.

137. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

138. *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 FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

139. *Additional Information.* For additional information on this

proceeding, contact David Konczal, *David.Konczal@fcc.gov,* or Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

140. Accordingly, *It is ordered* that pursuant to the authority found in Sections 4(i), 4(j), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 548, this Notice of Proposed Rulemaking is adopted.

141. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

2. Section 76.1000 is amended by adding paragraph (n) to read as follows:

§ 76.1000 Definitions.

* * * * *

(n) *Regional Sports Network.* The term ''Regional Sports Network'' means video programming that:

(1) Provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball, Liga de Béisbol Profesional de Puerto Rico, Baloncesto Superior Nacional de Puerto Rico, Liga Mayor de Fútbol Nacional de Puerto Rico, and the Puerto Rico Islanders of the United Soccer League's First Division; and

(2) In any year, carries a minimum of either 100 hours of programming that meets the criteria of paragraph (n)(1) of this section, or 10 percent of the regular season games of at least one sports team that meets the criteria of paragraph (n)(1) of this section.

Alternative 1:

3. Section 76.1002 is amended by revising paragraph (c)(3) and (6) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(3) *Specific arrangements: Subdistribution agreements*—(i) *Unserved and served areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served or unserved by a cable operator, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(ii) of this section.

(ii) *Limitations on subdistribution agreements.* No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

* * * * *

(6) *Sunset provision.* The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2017, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

* * * * *

Alternative 2:

4. Section 76.1002 is amended by removing and reserving paragraph (c)(2), revising paragraph (c)(3) through (5), and removing paragraph (c)(6) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(3) *Specific arrangements: Subdistribution agreements*—(i) Unserved areas. No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992 unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(ii) of this section.

(ii) Limitations on subdistribution agreements in unserved areas. No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be

permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

(4) Public interest determination. In determining whether an exclusive contract is in the public interest for purposes of paragraph (c)(5) of this section, the Commission will consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

(i) The effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

(ii) The effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

(iii) The effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

(iv) The effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

(v) The duration of the exclusive contract.

(5) Commission approval required. Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a ''Petition for Exclusivity'' to the Commission and receive approval from the Commission to preclude the filing of complaints alleging that an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, with respect to areas served by a cable operator violates section 628(b) of the Communications Act of 1934, as amended, and § 76.1001(a), or section 628(c)(2)(B) of the Communications Act of 1934, as amended, and paragraph (b) of this section.

(i) The petition for exclusivity shall contain those portions of the contract relevant to exclusivity, including:

(A) A description of the programming service;

(B) The extent and duration of exclusivity proposed; and

(C) Any other terms or provisions directly related to exclusivity or to any of the criteria set forth in paragraph (c)(4) of this section. The petition for exclusivity shall also include a statement setting forth the petitioner's reasons to support a finding that the contract is in the public interest, addressing each of the five factors set forth in paragraph (c)(4) of this section.

(ii) Any competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, setting forth its reasons to support a finding that the contract is not in the public interest under the criteria set forth in paragraph (c)(4) of this section. Any such formal opposition must be served on petitioner on the same day on which it is filed with the Commission.

(iii) The petitioner may file a response within ten (10) days of receipt of any formal opposition. The Commission will then approve or deny the petition for exclusivity.

* * * * *

Alternative 3:

5. Section 76.1002 is amended by revising paragraph (c)(2) through (3) and (5), removing and reserving paragraph (c)(6), and adding paragraph (c)(7) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(2) *Served areas.* No cable operator shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served by a cable operator, unless:

(i) The Commission determines in accordance with paragraph (c)(4) of this section that such contract, practice, activity or arrangement is in the public interest; or

(ii) Such contract, practice, activity or arrangement pertains to a geographic area for which a petition for sunset has been granted pursuant to paragraph (c)(7) of this section.

(3) *Specific arrangements: Subdistribution agreements*—(i) *Unserved and served areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served or unserved by a cable operator, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(ii) of this section.

(ii) *Limitations on subdistribution agreements.* No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

(iii) *Exceptions.* Paragraph (c)(3) of this section shall not apply in a geographic area where a petition for sunset has been granted pursuant to paragraph (c)(7) of this section.

* * * * *

(5) *Commission approval required.* (i) Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a ''Petition for Exclusivity'' to the Commission and receive approval from the Commission:

(A) Prior to enforcing or entering into an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, subject to paragraph (c)(2) of this section that pertains to a geographic area for which a petition for sunset has not been granted pursuant to paragraph (c)(7) of this section; and

(B) To preclude the filing of complaints alleging that an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, with respect to areas served by a cable operator violates section 628(b)

of the Communications Act of 1934, as amended, and § 76.1001(a) of this part, or section 628(c)(2)(B) of the Communications Act of 1934, as amended, and paragraph (b) of this section.

(ii) The petition for exclusivity shall contain those portions of the contract relevant to exclusivity, including:

(A) A description of the programming service;

(B) The extent and duration of exclusivity proposed; and

(C) Any other terms or provisions directly related to exclusivity or to any of the criteria set forth in paragraph (c)(4) of this section. The petition for exclusivity shall also include a statement setting forth the petitioner's reasons to support a finding that the contract is in the public interest, addressing each of the five factors set forth in paragraph (c)(4) of this section.

(iii) Any competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, setting forth its reasons to support a finding that the contract is not in the public interest under the criteria set forth in paragraph (c)(4) of this section. Any such formal opposition must be served on petitioner on the same day on which it is filed with the Commission.

(iv) The petitioner may file a response within ten (10) days of receipt of any formal opposition. The Commission will then approve or deny the petition for exclusivity.

* * * * *

(7) Petition for Sunset. Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to remove the prohibition on exclusive contracts and practices, activities or arrangements tantamount to an exclusive contract set forth in paragraph (c)(2) of this section may submit a ''Petition for Sunset'' to the Commission.

(i) The petition for sunset shall specify the geographic area for which a sunset of the prohibition set forth in paragraph (c)(2) of this section is sought and shall include a statement setting forth the petitioner's reasons to support a finding that such prohibition is not necessary to preserve and protect competition and diversity in the distribution of video programming in the geographic area specified.

(ii) Any competing multichannel video programming distributor or other interested party affected by the petition for sunset may file an opposition to the petition within forty-five (45) days of the date on which the petition is placed on public notice, setting forth its reasons to support a finding that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. Any such formal opposition must be served on the petitioner on the same day on which it is filed with the Commission.

(iii) The petitioner may file a response within fifteen (15) days of receipt of any formal opposition.

(iv) If the Commission finds that the prohibition is not necessary to preserve and protect competition and diversity in the distribution of video programming, then the prohibition set forth in paragraph (c)(2) of this section shall no longer apply in the geographic area specified in the decision of the Commission.

* * * * *

Alternative 4:

6. Section 76.1002 is amended by revising paragraphs (c)(2) (3), (5) and (6) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(2) *Served areas.* No cable operator shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming that meets the definition of a Regional Sports Network as defined in § 76.1000(n) of this part with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served by a cable operator, unless the Commission determines in accordance with paragraph (c)(4) of this section that such contract, practice, activity or arrangement is in the public interest.

(3) *Specific arrangements: Subdistribution agreements*—(i) *Unserved areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, for distribution to persons in areas not served by a cable operator as of October 5, 1992, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(iii) of this section.

(ii) *Served areas.* No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming that meets the definition of a Regional Sports Network as defined in § 76.1000(n) of this part with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, with respect to areas served by a cable operator, unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(iii) of this section.

(iii) *Limitations on subdistribution agreements.* No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to

(A) Purchase additional or unrelated programming as a condition of such subdistribution; or

(B) Provide access to private property in exchange for access to programming. In addition, a subdistributor may not charge a competing multichannel video programming distributor more for said programming than the satellite cable programming vendor or satellite broadcast programming vendor itself would be permitted to charge. Any cable operator acting as a subdistributor of satellite cable programming or satellite broadcast programming must respond to a request for access to such programming by a competing multichannel video programming distributor within fifteen (15) days of the request. If the request is denied, the competing multichannel video programming distributor must be permitted to negotiate directly with the satellite cable programming vendor or satellite broadcast programming vendor.

* * * * *

(5) Commission approval required. (i) Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a ''Petition for Exclusivity'' to the Commission and receive approval from the Commission:

(A) Prior to enforcing or entering into an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, subject to paragraph (c)(2) of this section; and

(B) To preclude the filing of complaints alleging that an exclusive contract, or practice, activity or arrangement tantamount to an exclusive contract, with respect to areas served by a cable operator violates section 628(b) of the Communications Act of 1934, as amended, and § 76.1001(a) of this part, or section 628(c)(2)(B) of the Communications Act of 1934, as amended, and paragraph (b) of this section.

(ii) The petition for exclusivity shall contain those portions of the contract relevant to exclusivity, including:

(A) A description of the programming service;

(B) The extent and duration of exclusivity proposed; and

(C) Any other terms or provisions directly related to exclusivity or to any of the criteria set forth in paragraph (c)(4) of this section. The petition for exclusivity shall also include a statement setting forth the petitioner's reasons to support a finding that the contract is in the public interest, addressing each of the five factors set forth in paragraph (c)(4) of this section.

(iii) Any competing multichannel video programming distributor affected by the proposed exclusivity may file an opposition to the petition for exclusivity within thirty (30) days of the date on which the petition is placed on public notice, setting forth its reasons to support a finding that the contract is not in the public interest under the criteria set forth in paragraph (c)(4) of this section. Any such formal opposition must be served on petitioner on the same day on which it is filed with the Commission.

(iv) The petitioner may file a response within ten (10) days of receipt of any formal opposition. The Commission will then approve or deny the petition for exclusivity.

(6) Sunset provision. The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2017, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

* * * * *

7. Section 76.1003 is amended by revising paragraph (e)(1) to read as follows:

§ 76.1003 Program access proceedings.

* * * * *

(e) *Answer.* (1) Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint, provided that the answer shall be filed within forty-five (45) days of service of the complaint if the complaint alleges a violation of section 628(b) of the Communications Act of 1934, as amended, or § 76.1001(a). To the extent that a cable operator, satellite cable programming vendor or satellite broadcast programming vendor expressly references and relies upon a document or documents in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the answer.

* * * * *

Alternative 1:

8. Section 76.1004 is amended by revising paragraph (b) to read as follows:

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

* * * * *

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers as follows: No common carrier or its affiliate that provides video programming directly to subscribers shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest, or any satellite broadcasting vendor in which a common carrier or its affiliate has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

Alternative 2:

9. Section 76.1004 is amended by revising paragraph (b) to read as follows:

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

* * * * *

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers in such a way that such common carrier or its affiliate shall be generally restricted from entering into an exclusive arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest or a satellite broadcast programming vendor in which a common carrier or its affiliate has an attributable interest, unless the arrangement pertains to an area served by a cable system as of October 5, 1992, and:

(1) The Commission determines in accordance with § 76.1002(c)(4) that such arrangement is in the public interest; or

(2) Such arrangement pertains to a geographic area for which a petition for sunset has been granted pursuant to § 76.1002(c)(7) of this part.

Alternative 3:

10. Section 76.1004 is amended by revising paragraph (b) to read as follows:

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

* * * * *

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers in such a way that such common carrier or its affiliate shall be generally restricted from entering into an exclusive arrangement for satellite cable programming or satellite broadcast programming that meets the definition of a Regional Sports Network as defined in § 76.1000(n) with a satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest or a satellite broadcast programming vendor in which a common carrier or its affiliate has an attributable interest, unless the arrangement pertains to an area served by a cable system as of October 5, 1992, and the Commission determines in accordance with § 76.1002(c)(4) that such arrangement is in the public interest.

Alternative 1:

11. Section 76.1507 is amended by removing and reserving paragraph (a)(2) and revising paragraphs (a)(3) and (b) to read as follows:

§ 76.1507 Competitive access to satellite cable programming.

(a) * * *

(3) Section 76.1002(c)(3)(i) through (ii) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable

programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992 unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(ii).

(b) No open video system programming provider in which a cable operator has an attributable interest shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest, or any satellite broadcasting vendor in which a cable operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

Alternative 2:

12. Section 76.1507 is amended by revising paragraphs (a)(2) and (3) and paragraph (b)(2) to read as follows:

§ 76.1507 Competitive access to satellite cable programming.

(a) * * *

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless:

(i) The Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest; or

(ii) Such a contract, practice, activity or arrangement pertains to a geographic area for which a petition for sunset has been granted pursuant to § 76.1002(c)(7).

(3) Section 76.1002(c)(3)(i) through (ii) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest, with respect to areas served or unserved by a cable operator, unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(ii), except as provided in § 76.1002(c)(3)(iii).

(b) * * *

(2) Enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor, unless:

(i) The Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest; or

(ii) Such a contract, practice, activity or arrangement pertains to a geographic area for which a petition for sunset has been granted pursuant to § 76.1002(c)(7).

Alternative 3:

13. Section 76.1507 is amended by revising paragraph (a)(2) through (3) and paragraph (b)(2) to read as follows:

§ 76.1507 Competitive access to satellite cable programming.

(a) * * *

(2) Section 76.1002(c)(2) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator or its affiliate that provides video programming on its open video system shall enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming that meets the definition of a Regional Sports Network as defined in § 76.1000(n) of this part with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

(3) Section 76.1002(c)(3)(i) through (ii) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows:

(i) *Unserved areas.* No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992 unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(iii).

(ii) *Served areas.* No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming that meets the definition of a Regional Sports Network as defined in § 76.1000(n) of this part with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest, with respect to areas served by a cable operator, unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(iii).

(b) * * *

(2) Enter into any exclusive contracts, or engage in any practice, activity or arrangement tantamount to an exclusive contract, for satellite cable programming or satellite broadcast programming that meets the definition of a Regional Sports Network as defined in § 76.1000(n) of this part with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor, unless the Commission determines in

accordance with § 76.1002(c)(4) that such a contract, practice, activity or arrangement is in the public interest.

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FEDERAL REGISTER

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Part IV

The President

Memorandum of April 18, 2012—Establishing Policies for Addressing Domestic Violence in the Federal Workforce

Federal Register
Vol. 77, No. 76
Monday, April 23, 2012

Presidential Documents

Title 3—

The President

Memorandum of April 18, 2012

Establishing Policies for Addressing Domestic Violence in the Federal Workforce

Memorandum for the Heads of Executive Departments and Agencies

Despite the considerable progress made since the initial passage of the Violence Against Women Act in 1994 (Public Law 103–322), domestic violence remains a significant problem facing individuals, families, and communities. Domestic violence causes two million injuries each year, and an average of three women in the United States die each day as a result of domestic violence. While a disproportionate number of victims are women, domestic violence can affect anyone.

The effects of domestic violence spill over into the workplace. The Centers for Disease Control and Prevention estimate that domestic violence costs our Nation $8 billion a year in lost productivity and health care costs alone, and other studies have suggested that the full economic impact is even higher. Moreover, many victims of domestic violence report being harassed in the workplace or experiencing other employment-related effects.

As the Nation's largest employer, the Federal Government should act as a model in responding to the effects of domestic violence on its workforce. Executive departments and agencies (agencies) have taken steps to address this issue, including by enhancing the quality and effectiveness of security in Federal facilities and by linking victims of domestic violence with Employee Assistance Programs. By building on these important efforts and existing policies, the Federal Government can further address the effects of domestic violence on its workforce.

It is the policy of the Federal Government to promote the health and safety of its employees by acting to prevent domestic violence within the workplace and by providing support and assistance to Federal employees whose working lives are affected by such violence. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. *Government-wide Guidance to Address the Effects of Domestic Violence on the Federal Workforce.* Within 240 days of the date of this memorandum, the Director of the Office of Personnel Management (OPM) shall, in consultation with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Homeland Security, and other interested heads of agencies:

(a) issue guidance to agencies on the content of agency-specific policies, as required by section 2 of this memorandum, to prevent domestic violence and address its effects on the Federal workforce. The guidance shall include recommended steps agencies can take as employers for early intervention in and prevention of domestic violence committed against or by employees, guidelines for assisting employee victims, leave policies relating to domestic violence situations, general guidelines on when it may be appropriate to take disciplinary action against employees who commit or threaten acts of domestic violence, measures to improve workplace safety related to domestic violence, and resources for identifying relevant best practices related to domestic violence;

(b) establish a process for providing technical assistance to agencies in developing agency-specific policies, consistent with the guidance created

pursuant to subsection (a) of this section, that meet the needs of their workforce; and

(c) consider whether issuing further guidance is warranted with respect to sexual assault and stalking and, if so, issue such guidance.

Sec. 2. *Agency-Specific Actions and Policies.* (a) Within 90 days from the date of this memorandum, each agency shall make available to the Director of OPM any existing agency-specific policies and practices for addressing the effects of domestic violence on its workforce.

(b) Within 120 days from the issuance of the guidance created pursuant to section 1 of this memorandum, each agency shall develop or modify, as appropriate, agency-specific polices for addressing the effects of domestic violence on its workforce, consistent with OPM guidance. Each agency shall submit for review and comment to the Director of OPM, a draft new or modified agency-specific policy. In reviewing the draft agency-specific policies, the Director of OPM shall consult with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Homeland Security, and other interested agency heads. Each agency shall issue a final agency-specific policy within 180 days after submission of its draft policy to the Director of OPM.

Sec. 3. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

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

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

The Director of OPM is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,

Washington, April 18, 2012

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