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# FEDERAL REGISTER

Vol. 76 Thursday

No. 23 February 3, 2011

Pages 6049–6310

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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# Rules and Regulations

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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 71

**[Docket No. FAA–2010–1029; Airspace Docket No. 10–AGL–17]**

## Amendment of Class E Airspace; Lafayette, Purdue University Airport, IN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Lafayette, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Clarian Arnett Heliport, Lafayette, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

**DATES:** Effective date: 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On November 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Lafayette, IN, creating controlled airspace at Clarian Arnett Heliport (75 FR 68554) Docket No. FAA–2010–1029. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate the new COPTER RNAV (POINT-IN-SPACE) standard instrument approach procedures at Clarian Arnett Heliport, Lafayette, IN. This action is necessary for the safety and management of IFR operations at the heliport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 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 adds controlled airspace at Clarian Arnett Heliport, Lafayette, IN.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface*

* * * * *

**AGL IN E5 Lafayette, Purdue University Airport, IN [Amended]**

Lafayette, Purdue University Airport, IN
(Lat. 40°24′44″ N., long. 86°56′13″ W.)
Lafayette, Clarian Arnett Heliport, IN Point in Space
(Lat. 40°23′30″ N., long. 86°48′58″ W.)
Boiler VORTAC
(Lat. 40°33′22″ N., long. 87°04′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Purdue University Airport, and within 1.7 miles each side of the 144° radial of the Boiler VORTAC extending from the 6.7-mile radius to the VORTAC, and within a 6-mile radius of the Clarian Arnett Heliport point in space at lat. 40°23′30″ N., long. 86°48′58″ W.

Issued in Fort Worth, Texas, on January 14, 2011.

**Richard J. Kervin, Jr.,**

*Acting Manager Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–2321 Filed 2–2–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 97

**[Docket No. 30766; Amdt. No. 3411]**

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

**DATES:** This rule is effective February 3, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 2011.

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

*For Examination*—

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

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

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

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

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

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

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

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

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

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

### The Rule

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

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

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

### Conclusion

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

### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on January 21, 2011.

**John McGraw,**

*Deputy Director, Flight Standards Service.*

### Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 10–Mar–11 ... | CA | California City ..... | California City Muni ..... | 0/0082 | 1/3/11 | RNAV (GPS) RWY 24, Orig |
| 10–Mar–11 ... | CA | San Jose ..... | Norman Y Mineta San Jose Intl. | 0/2236 | 1/4/11 | VOR/DME RWY 30R, Orig |
| 10–Mar–11 ... | FL | Bonifay ..... | Tri-County ..... | 0/3125 | 12/29/10 | NDB OR GPS A, Amdt 1 |
| 10–Mar–11 ... | PA | East Stroudsburg .... | Stroudsburg-Pocono ..... | 0/3126 | 12/29/10 | VOR/DME OR GPS A, Amdt 5 |
| 10–Mar–11 ... | TN | Jacksboro ..... | Campbell County ..... | 0/3127 | 12/29/10 | RNAV (GPS) RWY 23, Orig |
| 10–Mar–11 ... | GA | Macon ..... | Middle Georgia Rgnl ..... | 0/3128 | 1/3/11 | RNAV (GPS) RWY 13, Orig-A |
| 10–Mar–11 ... | GA | Macon ..... | Middle Georgia Rgnl ..... | 0/3129 | 1/3/11 | RNAV (GPS) RWY 5, Orig |
| 10–Mar–11 ... | GA | Macon ..... | Middle Georgia Rgnl ..... | 0/3130 | 1/3/11 | VOR RWY 13, Amdt 9 |
| 10–Mar–11 ... | GA | Macon ..... | Middle Georgia Rgnl ..... | 0/3131 | 1/3/11 | VOR RWY 23, Amdt 3 |
| 10–Mar–11 ... | GA | Macon ..... | Middle Georgia Rgnl ..... | 0/3132 | 1/3/11 | RNAV (GPS) RWY 31, Orig-A |
| 10–Mar–11 ... | TN | Sparta ..... | Upper Cumberland Rgnl ..... | 0/3172 | 12/29/10 | ILS OR LOC RWY 4, Amdt 1 |
| 10–Mar–11 ... | NC | Goldsboro ..... | Goldsboro-Wayne Muni ..... | 0/3173 | 1/3/11 | RNAV (GPS) RWY 5, Orig |
| 10–Mar–11 ... | TN | Sparta ..... | Upper Cumberland Rgnl ..... | 0/3174 | 12/29/10 | NDB RWY 4, Amdt 4 |
| 10–Mar–11 ... | NC | Hickory ..... | Hickory Rgnl ..... | 0/3256 | 1/3/11 | VOR/DME RWY 24, Orig-A |
| 10–Mar–11 ... | TN | Morristown ..... | Moore-Murrell ..... | 0/3656 | 1/3/11 | SDF RWY 5, Amdt 4 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3742 | 1/19/11 | ILS OR LOC RWY 17C, ILS RWY 17C (CAT II), ILS RWY 17C (CAT III), Amdt 9 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3743 | 1/19/11 | CONVERGING ILS RWY 17C, Amdt 6 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3744 | 1/19/11 | ILS OR LOC RWY 17L, ILS RWY 17L (CAT II), ILS RWY 17L (CAT III), Amdt 5B |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3746 | 1/19/11 | ILS OR LOC RWY 35C, ILS RWY 35C (CAT II), ILS RWY 35C (CAT III), Amdt 1 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3747 | 1/19/11 | ILS OR LOC RWY 31R, Amdt 13 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3748 | 1/19/11 | ILS OR LOC RWY 17R, Amdt 22 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3749 | 1/19/11 | ILS OR LOC RWY 36R, Amdt 4 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3750 | 1/19/11 | ILS OR LOC RWY 18L, Amdt 1 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3751 | 1/19/11 | ILS OR LOC RWY 36L, Amdt 1 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3752 | 1/19/11 | ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 3 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3753 | 1/19/11 | ILS OR LOC RWY 18R, ILS RWY 18R (CAT II), ILS RWY 18R (CAT III), Amdt 7 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3754 | 1/19/11 | CONVERGING ILS RWY 31R, Amdt 7A |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3755 | 1/19/11 | ILS OR LOC RWY 13R, Amdt 7A |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3756 | 1/19/11 | CONVERGING ILS RWY 35L, Amdt 3 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3757 | 1/19/11 | CONVERGING ILS RWY 18R, Amdt 5 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3758 | 1/19/11 | CONVERGING ILS RWY 17R, Amdt 8 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3759 | 1/19/11 | CONVERGING ILS RWY 18L, Amdt 1 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3760 | 1/19/11 | CONVERGING ILS RWY 36R, Amdt 2 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3761 | 1/19/11 | CONVERGING ILS RWY 13R, Amdt 6A |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3762 | 1/19/11 | CONVERGING ILS RWY 36L, Amdt 1 |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3764 | 1/19/11 | CONVERGING ILS RWY 35C, Amdt 1A |
| 10–Mar–11 ... | TX | Dallas-Fort Worth ... | Dallas-Fort Worth Intl ..... | 0/3765 | 1/19/11 | ILS OR LOC RWY 35L, Amdt 4 |
| 10–Mar–11 ... | VA | Blacksburg ..... | Virginia Tech/Montgomery Executive. | 0/3854 | 1/5/11 | LOC/DME RWY 12, Amdt 1 |
| 10–Mar–11 ... | MS | Hattiesburg/Laurel .. | Hattiesburg-Laurel Rgnl ..... | 0/3855 | 1/5/11 | ILS OR LOC RWY 18, Amdt 7 |
| 10–Mar–11 ... | VA | Norfolk ..... | Norfolk Intl ..... | 0/3856 | 1/5/11 | RNAV (GPS) RWY 5, Orig |
| 10–Mar–11 ... | NC | Winston Salem ..... | Smith Reynolds ..... | 0/3857 | 1/5/11 | ILS OR LOC RWY 33, Amdt 29 |
| 10–Mar–11 ... | KY | Williamsburg ..... | Williamsburg-Whitley County .. | 0/3869 | 1/4/11 | RNAV (GPS) RWY 20, Orig-A |
| 10–Mar–11 ... | CA | San Francisco ..... | San Francisco Intl ..... | 0/3878 | 1/4/11 | ILS PRM RWY 28L (Sim. Close Parallel), Amdt 1A |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0122 | 1/4/11 | ILS PRM RWY 8R (Sim. Close Parallel), Orig-A |
| 10–Mar–11 ... | SC | Anderson ..... | Anderson Rgnl ..... | 1/0123 | 1/5/11 | RNAV (GPS) RWY 23, Orig |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0125 | 1/6/11 | ILS PRM RWY 9L (Sim. Close Parallel), Orig-A |
| 10–Mar–11 ... | NY | Albany ..... | Albany Intl ..... | 1/0127 | 1/5/11 | RNAV (GPS) RWY 1, Orig |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0128 | 1/4/11 | ILS PRM RWY 26L (Sim. Close Parallel), Orig-A |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0129 | 1/4/11 | ILS PRM RWY 27L (Sim. Close Parallel), ILS PRM RWY 27L (CAT II) (Sim. Close Parallel), Amdt 1 |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0130 | 1/4/11 | ILS PRM RWY 26R (Sim. Close Parallel), ILS PRM RWY 26R (CAT II) (Sim. Close Parallel), Amdt 1 |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0131 | 1/4/11 | ILS PRM RWY 9R (Sim. Close Parallel), ILS PRM RWY 9R (Cat II) (Sim. Close Parallel), ILS PRM RWY 9R (Cat III) (Sim. Close Parallel), Orig-A |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0134 | 1/4/11 | ILS PRM RWY 8L (Sim. Close Parallel), ILS PRM RWY 8L (Cat II) (Sim. Close Parallel), ILS PRM RWY 8L (Cat III) (Sim. Close Parallel), Orig-B |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0135 | 1/4/11 | ILS PRM RWY 28 (Sim. Close Parallel), ILS PRM RWY 28 (Cat II) (Sim. Close Parallel), Amdt 1A |
| 10–Mar–11 ... | GA | Atlanta ..... | Hartsfield-Jackson Atlanta Intl | 1/0136 | 1/4/11 | ILS PRM RWY 10 (Sim. Close Parallel), ILS PRM RWY 10 (Cat II) (Sim. Close Parallel), ILS PRM RWY 10 (Cat III) (Sim. Close Parallel), Amdt 1A |
| 10–Mar–11 ... | TX | Houston ..... | William P. Hobby ..... | 1/0171 | 1/7/11 | RNAV (GPS) RWY 4, Amdt 2 |
| 10–Mar–11 ... | TX | Wichita Falls ..... | Wichita Valley ..... | 1/0290 | 1/7/11 | VOR B, Amdt 6 |
| 10–Mar–11 ... | OR | Medford ..... | Rogue Valley Intl-Medford ..... | 1/0369 | 1/5/11 | ILS OR LOC/DME RWY 14, Amdt 2 |
| 10–Mar–11 ... | NM | Roswell ..... | Roswell Intl Air Center ..... | 1/0543 | 1/7/11 | Takeoff Minimums and Obstacle DP, Orig |
| 10–Mar–11 ... | TX | El Paso ..... | Horizon ..... | 1/0560 | 1/18/11 | VOR/DME OR GPS A, Amdt 4B |
| 10–Mar–11 ... | TX | Sulphur Springs ..... | Sulphur Springs Muni ..... | 1/0744 | 1/18/11 | RNAV (GPS) RWY 36, Orig |
| 10–Mar–11 ... | TX | Waco ..... | Mc Gregor Executive ..... | 1/0751 | 1/10/11 | RNAV (GPS) RWY 35, Orig |
| 10–Mar–11 ... | TX | Liberty ..... | Liberty Muni ..... | 1/0786 | 1/18/11 | Takeoff Minimums and Obstacle DP, Orig |
| 10–Mar–11 ... | TX | Liberty ..... | Liberty Muni ..... | 1/0787 | 1/10/11 | VOR A, Amdt 5 |
| 10–Mar–11 ... | AZ | Casa Grande ..... | Casa Grande Muni ..... | 1/0873 | 1/10/11 | Takeoff Minimums and Obstacle DP, Amdt 1 |
| 10–Mar–11 ... | AZ | Casa Grande ..... | Casa Grande Muni ..... | 1/0874 | 1/10/11 | ILS OR LOC/DME RWY 5, Amdt 6C |
| 10–Mar–11 ... | AZ | Casa Grande ..... | Casa Grande Muni ..... | 1/0877 | 1/10/11 | GPS RWY 23, Orig-A |
| 10–Mar–11 ... | AZ | Casa Grande ..... | Casa Grande Muni ..... | 1/0878 | 1/10/11 | GPS RWY 5, Orig-A |
| 10–Mar–11 ... | TX | Denton ..... | Denton Muni ..... | 1/1543 | 1/18/11 | ILS OR LOC RWY 17, Amdt 8 |
| 10–Mar–11 ... | NM | Socorro ..... | Socorro Muni ..... | 1/2196 | 1/18/11 | RNAV (GPS) Y RWY 33, Orig |
| 10–Mar–11 ... | OR | Burns ..... | Burns Muni ..... | 1/2773 | 1/19/11 | RNAV (GPS) RWY 30, Amdt 3A |
| 10–Mar–11 ... | OR | Burns ..... | Burns Muni ..... | 1/2774 | 1/19/11 | VOR RWY 30, Amdt 3A |

[FR Doc. 2011–2053 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30765; Amdt. No. 3410]**

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

**DATES:** This rule is effective February 3, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 2011.

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

*For Examination*—

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

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

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

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

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

### List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on January 21, 2011.

**John McGraw,**

*Deputy Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14,

Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

**Effective 10 MAR 2011**

Hayward, CA, Hayward Executive, VOR OR GPS–A, Amdt 6C, CANCELLED
Sacramento, CA, Sacramento Mather, RNAV (GPS) RWY 22L, Amdt 1A
San Francisco, CA, San Francisco Intl, VOR RWY 19L, Amdt 9
San Francisco, CA, San Francisco Intl, VOR–B, Amdt 6
Washington, DC, Ronald Reagan Washington National, Takeoff Minimums and Obstacle DP, Amdt 6
Kalaupapa, HI, Kalaupapa, KALAUPAPA ONE Graphic DP
Kalaupapa, HI, Kalaupapa, RNAV (GPS)-A, Orig
Kalaupapa, HI, Kalaupapa, Takeoff Minimums and Obstacle DP, Orig
Anderson, IN, Anderson Muni-Darlington Field, Takeoff Minimums and Obstacle DP, Amdt 1
Winchester, IN, Randolph County, Takeoff Minimums and Obstacle DP, Orig
Shreveport, LA, Shreveport Rgnl, RADAR–1, Amdt 4
Tallulah-Vicksburg, MS, LA, Vicksburg Tallulah Rgnl, LOC RWY 36, Amdt 3
Bedford, MA, Laurence G. Hanscom Field, Takeoff Minimums and Obstacle DP, Amdt 5
Beverly, MA, Beverly Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Lawrence, MA, Lawrence Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Norwood, MA, Norwood Memorial, Takeoff Minimums and Obstacle DP, Amdt 6
Frankfort, MI, Frankfort Dow Memorial Field, Takeoff Minimums and Obstacle DP, Amdt 3
South Haven, MI, South Haven Area Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Caledonia, MN, Houston County, GPS RWY 31, Orig, CANCELLED
Branson, MO, M. Graham Clark-Taney County, RNAV (GPS) RWY 12, Orig
Branson, MO, M. Graham Clark-Taney County, RNAV (GPS) RWY 30, Orig
Branson, MO, M. Graham Clark-Taney County, Takeoff Minimums and Obstacle DP, Amdt 2
Point Lookout, MO, M. Graham Clark, GPS RWY 11, Orig-C, CANCELLED
Point Lookout, MO, M. Graham Clark, VOR/DME RNAV OR GPS RWY 29, Amdt 2B, CANCELLED
Potosi, MO, Washington County, Takeoff Minimums and Obstacle DP, Amdt 1
Hattiesburg, MS, Hattiesburg Bobby L Chain Muni, RNAV (GPS) Y RWY 13, Amdt 2
Hattiesburg, MS, Hattiesburg Bobby L Chain Muni, RNAV (GPS) Z RWY 13, Amdt 1
Wadesboro, NC, Anson County-Jeff Cloud Field, ILS OR LOC RWY 34, Orig
Wadesboro, NC, Anson County-Jeff Cloud Field, RNAV (GPS) RWY 16, Amdt 1
Wadesboro, NC, Anson County-Jeff Cloud Field, RNAV (GPS) RWY 34, Amdt 2
Wadesboro, NC, Anson County-Jeff Cloud Field, Takeoff Minimums and Obstacle DP, Amdt 2
Berlin, NH, Berlin Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Berlin, NH, Berlin Rgnl, VOR/DME RWY 18, Amdt 2
Blairstown, NJ, Blairstown, RNAV (GPS) RWY 25, Amdt 1
Blairstown, NJ, Blairstown, Takeoff Minimums and Obstacle DP, Amdt 2
Ticonderoga, NY, Ticonderoga Muni, RNAV (GPS) RWY 2, Amdt 1
Ticonderoga, NY, Ticonderoga Muni, RNAV (GPS) RWY 20, Amdt 1
Columbus, OH, Ohio State University, GPS RWY 27L, Amdt 1A, CANCELLED
Columbus, OH, Ohio State University, NDB RWY 9R, Amdt 3
Columbus, OH, Ohio State University, RNAV (GPS) RWY 9R, Amdt 1
Columbus, OH, Ohio State University, RNAV (GPS) RWY 27L, Orig
Columbus, OH, Ohio State University, Takeoff Minimums and Obstacle DP, Orig
Ardmore, OK, Ardmore Downtown Executive, Takeoff Minimums and Obstacle DP, Amdt 3
Mangum, OK, Scott Field, Takeoff Minimums and Obstacle DP, Orig
Sallisaw, OK, Sallisaw Muni, Takeoff Minimums and Obstacle DP, Amdt 2
East Stroudsburg, PA, Stroudsburg-Pocono, Takeoff Minimums and Obstacle DP, Amdt 1
Aiken, SC, Aiken Muni, LOC RWY 7, Orig
Childress, TX, Childress Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Denton, TX, Denton Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Gruver, TX, Cluck Ranch, VOR/DME OR GPS–A, Amdt 1, CANCELLED
Lubbock, TX, Lubbock Preston Smith Intl, ILS OR LOC RWY 17R, Amdt 17A
Bryce Canyon, UT, Bryce Canyon, BRYCE Two Graphic DP
Bryce Canyon, UT, Bryce Canyon, Takeoff Minimums and Obstacle DP, Amdt 1
Salt Lake City, UT, South Valley Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Leesburg, VA, Leesburg Executive, ILS OR LOC RWY 17, Orig
Leesburg, VA, Leesburg Executive, LOC RWY 17, Amdt 3, CANCELLED
Richmond, VA, Richmond Intl, ILS OR LOC RWY 2, Amdt 2
Richmond, VA, Richmond Intl, ILS OR LOC RWY 16, Amdt 9
Richmond, VA, Richmond Intl, ILS OR LOC RWY 34, ILS RWY 34 (SA CAT I), ILS RWY 34 (CAT II), ILS RWY 34 (CAT III), Amdt 14
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 2, Amdt 1
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 7, Amdt 1
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 16, Amdt 1
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 20, Amdt 1
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 25, Amdt 1
Richmond, VA, Richmond Intl, RNAV (GPS) RWY 34, Amdt 1
Richmond, VA, Richmond Intl, VOR RWY 2, Amdt 6

**On January 10, 2011 (76 FR 06) the FAA published an Amendment in Docket No. 30761; Amdt. No. 3406 to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries, effective 10 February 2011 * * ***

Perkin, IL, Perkin Muni, RNAV (GPS) RWY 9, Orig-A
Perkin, IL, Perkin Muni, RNAV (GPS) RWY 27, Orig-A
Perkin, IL, Perkin Muni, VOR–A, Amdt 7A

*** * * have incorrect city and airport names. Each item should begin * * ***

*Pekin,* IL, *Pekin* Muni.

**The remaining information remains unchanged.**

[FR Doc. 2011–2051 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 552

**[BOP–1146–F]**

**RIN 1120–AB46**

### Use of Less-Than-Lethal Force: Delegation

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) finalizes its proposed regulation on the use of chemical agents and other non-lethal (less-than-lethal) force to clarify that the authority of the Warden to authorize the use of chemical agents or other less-than-lethal weapons may not be delegated below the position of Lieutenant.

**DATES:** This rule is effective on March 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** In this document, the Bureau finalizes a regulation proposed on June 25, 2008 (73 FR 39584), regarding the use of

chemical agents and other less-than-lethal force. In this regulation, we clarify that the authority of the Warden to authorize the use of less-than-lethal weapons, including those containing chemical agents, may not be delegated below the position of Lieutenant. We replace the term "non-lethal" with the term "less-than-lethal" for reasons described below.

We received four comments on the proposed rule. One comment was in support of the proposed rule. We address issues raised by the comments below.

One commenter stated the following: "We believe such authority, absent an emergency, should be delegated no further than Acting Warden or on-site CEO. * * * Such low-level staff [Lieutenants] have an egregious and established history of abusing incarcerated persons." A second commenter was similarly concerned with the level of delegation.

First, the Bureau does not consider Lieutenants to be "low-level staff." Rather, they are part of the Bureau's management staff, with the requisite training and experience to manage emergency situations, including specific training on situations which necessitate the use of chemical agents or other less-than-lethal weapons. The revision effectuated by this final rule is necessary to expedite decision-making by the Lieutenant, who is often the senior-most qualified staff physically present at the scene of the emergency, thereby ensuring the safety, security, and good order of the institution, and protection of the public.

Second, we note that all the commenters discussed the regulation in terms of delegation to one lieutenant (singular). We must correct the apparent assumption underlying these comments, which may have been caused by the language of the proposed regulation stating that the Warden could delegate authority to use less-than-lethal force "to the senior facility supervisor on duty and physically present, but not below the position of Lieutenant." We therefore alter the language to clarify that such authority will be delegated to address multiple emergency situations as needed. The language will read as follows: "The Warden may delegate the authority under this regulation to one or more supervisors on duty and physically present, but not below the position of Lieutenant."

Limiting the Warden's delegated authority to one Lieutenant at a time would prevent Bureau staff from quickly and effectively responding to multiple simultaneous emergency situations that may arise at different places within the same Bureau facility.

Allowing the authority to prescribe the use of less-than-lethal force to be delegated to one person alone is inappropriate, as it is impossible for that one person to be "physically present" at more than one emergency situation at a time within the Bureau facility.

Third, with regard to the commenter's allegations of abuse of authority, it is important to note that Bureau staff, including Lieutenants, are held to the highest standards of professionalism. Although there is always the potential for abuse of any rule or staff requirement, the Bureau conducts program reviews and quality control inspections frequently to ensure staff compliance with rules and policy. Employees are subject to administrative sanctions, personal liability, and even criminal and civil penalties for misconduct. If an inmate perceives staff abuse of the rules, that inmate can take advantage of our administrative remedy procedures (28 CFR part 542).

A commenter who supported the proposed rule suggested that it be "amended to include the requirement and detailed description of how the Lieutenants will receive training on the use of chemical agents, and the affects *[sic]*of the different kinds of chemical agent[s] to those exposed." The Bureau's corresponding use of force policy provides detailed guidance to staff and requires training of facility staff in the use of chemical agents. The Bureau's program statements, rather than the regulations themselves, are the appropriate vehicle through which staff receive direction regarding the implementation of the regulations.

A commenter also stated that, "as DOJ's own statistics show, * * * more incarcerated people are killed by use of these so-called "non-lethal" weapons than those designated as lethal." The commenter did not cite the "DOJ statistics" to which the comment refers. The Bureau's experience with less-than-lethal weapons has not shown that appropriate use of less-than-lethal alternatives has had lethal effect.

As an example, the most commonly used less-than-lethal alternatives used by the Bureau involve chemical agents. Oleoresin Capsicum (OC) is one of the types of chemical agents that the Bureau employs. OC is a naturally occurring substance found in the oily resin of cayenne and other varieties of peppers. In March 1994, the National Institute of Justice (NIJ) Technology Assessment Program issued a paper describing OC and its uses as a less-than-lethal weapon. National Institute of Justice Technology Assessment Program, *Oleoresin Capsicum: Pepper Spray as a Force Alternative* (March 1994).

The NIJ paper listed the following as the benefits of OC that were found by State Departments of Correction at the time:

- OC sprays seem to leave few if any residual effects, allowing suspects to be transported without affecting transporting officers. Decontamination protocol normally requires only fresh air and soap and water.
- Chemists assigned to the FBI's Forensic Science Research and Training Center did not see any long-term health risks associated with the use of OC.
- Thirty-nine police agencies and three correctional institutions using OC aerosols did not report any medical problems encountered by subjects being subdued and arrested, and no medical problems were encountered by the officers administering the OC.
- Departments that have adopted OC sprays claim to have fewer allegations of police use of excessive force or police brutality charges, resulting in fewer lawsuits.
- Departments have reported a reduction in officer and arrestee injuries as a result of the introduction of OC sprays.

However, the NIJ paper also states that if the subject has preexisting health issues, such as a respiratory problem, it is possible that OC sprays may cause upper respiratory inflammation or have other detrimental effects. In fact, virtually any weapon, or even item, considered to be "non-lethal" may be used to lethal effect if used inappropriately and contrary to Bureau policy. Therefore, for accuracy in terminology, we replace the term "non-lethal" with the more accurate term "less-than-lethal." We also make a conforming change in § 552.27, to replace the term "non-lethal" in that regulation with the term "less-than-lethal."

The term "less-than-lethal" is synonymous with "less lethal", "non-lethal", "non-deadly", and other such terms. We chose the term "less-than-lethal" because it most accurately describes the types of devices contemplated by this regulation. These devices include impact devices (such as batons, bean bag projectiles, etc.), chemical agents, and conducted energy devices (such as electronic immobilization, control, and restraint devices). "Less-than-lethal" devices are those used with a reasonable expectation that death or serious bodily injury will not result. As technology in this area evolves, the Bureau may use different types of less-than-lethal weapons.

We therefore finalize the proposed rule with minor changes as described above.

*Executive Order 12866.* This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. This regulation has been determined to be a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

*Executive Order 13132.* This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Regulatory Flexibility Act.* The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

*Unfunded Mandates Reform Act of 1995.* This regulation will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996.* This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 28 CFR Part 552**

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 552 as follows.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 552—CUSTODY

■ 1. The authority citation for 28 CFR part 552 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3050, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

■ 2. Revise § 552.25 to read as follows:

**§ 552.25 Use of less-than-lethal weapons, including chemical agents.**

(a) The Warden may authorize the use of less-than-lethal weapons, including those containing chemical agents, only when the situation is such that the inmate:

(1) Is armed and/or barricaded; or

(2) Cannot be approached without danger to self or others; and

(3) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.

(b) The Warden may delegate the authority under this regulation to one or more supervisors on duty and physically present, but not below the position of Lieutenant.

■ 3. In § 552.27, remove the term "non-lethal" and add the term "less-than-lethal" in its place.

[FR Doc. 2011–2364 Filed 2–2–11; 8:45 am]

**BILLING CODE 4410–05–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[EPA–HQ–OAR–2007–0562; EPA–HQ–OAR–2010–0163; FRL–9261–3]**

**RIN 2060–AQ30**

## Additional Air Quality Designations for the 2006 24-Hour Fine Particle National Ambient Air Quality Standards, 110(k)(6) Correction and Technical Correction Related to Prior Designation, and Decisions Related to the 1997 Air Quality Designations and Classifications for the Annual Fine Particles National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental amendments; Final rule.

**SUMMARY:** On November 13, 2009, EPA promulgated air quality designations nationwide for all but three areas for the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). This rule takes several additional actions related to the 2006 24-hour $PM_{2.5}$ NAAQS designations. It establishes the initial $PM_{2.5}$ air quality designations for three areas (Pinal County, Arizona; Plumas County, California; and Shasta County, California) and their respective surrounding counties that EPA deferred in the November 13, 2009 promulgated designations. Plumas and Shasta counties and their surrounding counties are being designated "unclassifiable/attainment," while a portion of Pinal County is being designated as "nonattainment." This action also includes a 110(k)(6) error correction (affecting Ravalli, Montana) and a technical correction (affecting Knoxville, Tennessee) related to the 2006 24-hour $PM_{2.5}$ NAAQS designations. Finally, in this action, EPA announces its decision to retain the current designation of unclassifiable/attainment for Harris County, Texas and Pinal County, Arizona for the 1997 annual $PM_{2.5}$ NAAQS.

**DATES:** *Effective Date:* The effective date of this rule is March 7, 2011.

**ADDRESSES:** The EPA has established two dockets for the actions contained in this final rule. Docket ID No. EPA–HQ–OAR–2007–0562 contains documents related to the initial designations for the three areas (Pinal County, Arizona; Plumas County, California; and Shasta County, California and their respective surrounding counties) for the 2006 24-hour $PM_{2.5}$ NAAQS. Docket ID No.

EPA–HQ–OAR–2010–0163 contains documents related to the potential redesignation process for two areas (Harris County, Texas and Pinal County, Arizona) for the 1997 annual $PM_{2.5}$ NAAQS. All documents contained in both dockets are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the Docket, 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, EPA has established a Web site for this rulemaking at: *http://www.epa.gov/pmdesignations/2006standards/index.htm.* The Web site includes EPA's final State and Tribal designations, as well as State initial recommendation letters, EPA modification letters, technical support documents, responses to comments, and other related technical information.

**FOR FURTHER INFORMATION CONTACT:** Beth W. Palma, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–5432 or by e-mail at: *palma.elizabeth@epa.gov* or Carla Oldham, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC, 27711, phone number (919) 541–3347 or by e-mail at: *oldham.carla@epa.gov.*

**Regional Office Contacts**

Region 4—Steve Scofield (404) 562–9034.

Region 6—Joe Kordzi (214) 665–7186.

Region 8—Catherine Roberts (303) 312–6025.

Region 9—Ginger Vagenas (415) 972–3964.

**SUPPLEMENTARY INFORMATION:**

The public may inspect the rule and the technical support information by contacting staff listed below at the following locations:

| Regional offices | Affected states |
|---|---|
| Richard A. Schutt, Chief, Air Planning Branch, EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth, Street, SW., 12th Floor, Atlanta, GA 30303, (404) 562–9033. | Tennessee. |
| Guy Donaldson, Chief, Air Planning Section, EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7242. | Texas. |
| Monica Morales, Chief, Air Quality Planning Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6936. | Montana. |
| Lisa Hanf, Chief, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3854. | Arizona and California. |

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## I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
AQS Air Quality System
CAA Clean Air Act
CBSA Core Based Statistical Area
CFR Code of Federal Regulations
DC District of Columbia
EER Exceptional Events Rule
EO Executive Order
EPA Environmental Protection Agency
FR **Federal Register**
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer Advancement Act
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
SIP State Implementation Plan
$\mu g/m^3$ micrograms per cubic meter
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
U.S. United States
VCS Voluntary Consensus Standards

## II. What is the purpose of this action?

At the time that EPA finalized designations for the 2006 24-hour $PM_{2.5}$ NAAQS on November 13, 2009 (74 FR 58688), EPA deferred designations for three areas to evaluate further the reason for their high fine particle concentrations during 2006–2008, a period which indicated possible new violating monitors in Pinal County, Arizona; Plumas County, California; and Shasta County, California. To determine what areas might be contributing to these potential violations, EPA also deferred initial designations for the following nearby counties: (i) In Arizona, the counties of Cochise, Gila, Graham, La Paz, Maricopa, Pima, Yavapai, and Yuma; and (ii) in California, the counties of Butte, Lassen, Modoc, Sierra, Siskiyou, Tehama, Trinity, and Yuba. EPA also deferred designations for Indian Country located within or near these counties.

The purpose of this action is to promulgate designations for the areas described above, including Indian Country not specifically excluded, in accordance with the requirements of Clean Air Act (CAA) section 107(d). The lists of areas in each State and in Indian Country, and the designation for each area, appear in the tables at the end of this final rule (amendments to 40 CFR 81.300–356). In particular, EPA is designating as "nonattainment" for the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$ State lands in a portion of Pinal County,

Arizona.[1] The basis for establishing this partial county as nonattainment is monitored air quality data for 2006–2008 indicating a violation of the NAAQS.[2] For the designated Pinal County nonattainment area, Arizona must develop a State Implementation Plan (SIP) that provides for attainment of the NAAQS as expeditiously as practicable, in accordance with the requirements of the CAA and applicable EPA regulations. Pursuant to CAA section 172(b), EPA is announcing that this plan must be submitted no later three years from the effective date of these designations.

Such plan must meet the requirements of section 172(c). EPA's current implementation regulations for $PM_{2.5}$ at 40 CFR section 51.1000–1012 apply only to the 1997 $PM_{2.5}$ NAAQS. EPA is considering amending those regulations to encompass the 2006 24-hour $PM_{2.5}$ NAAQS and to address any other revisions to the regulations that are necessary for these new standards. However, EPA anticipates that the SIP requirements for the 2006 $PM_{2.5}$ NAAQS should be comparable to those for the 1997 $PM_{2.5}$ NAAQS, so that the regulations at sections 51.1000–1012 can be used as guidance for SIP planning for the 2006 $PM_{2.5}$ NAAQS, to the extent appropriate, pending any revisions to the regulations. For those areas designated unclassifiable/attainment, States are not required to develop a SIP to meet the requirements of section 172(c), but States must meet other statutory and regulatory requirements to prevent significant deterioration of air quality in those areas as well as applicable infrastructure requirements of section 110(a). EPA continues to defer the designations associated with Tribal lands in or near the designated nonattainment area in Pinal County, Arizona, to allow for completion of the Tribal consultation process.

After further review of air quality monitoring data, including an evaluation of exceptional event claims, EPA is also designating as "unclassifiable/attainment" the remaining two areas (Plumas County, California; Shasta County, California; and eight nearby counties) for which we previously deferred the initial air quality designation for the 2006 24-hour $PM_{2.5}$ NAAQS.

When EPA promulgated the initial air quality designations in the November 13, 2009 notice (74 FR 58688), we also announced that our review of 2006–2008 monitoring data for the annual $PM_{2.5}$ NAAQS indicated that two areas initially designated as "unclassifiable/attainment" for the 1997 annual $PM_{2.5}$ NAAQS (Harris County, Texas and Pinal County, Arizona) were violating those NAAQS based on these years of data. After further review of these data, EPA is announcing in this action that we are retaining the designation of "unclassifiable/attainment" for both areas for the 1997 annual $PM_{2.5}$ NAAQS, for the reasons explained below.

## III. What are the 2006 24-hour $PM_{2.5}$ NAAQS designations promulgated in this action?

*Designations for the Pinal County, Arizona area based on 2006–2008 data.* In this action, EPA is designating as "nonattainment" a portion of State lands in Pinal County, Arizona. The basis for establishing this partial county as nonattainment is monitored air quality data for 2006–2008 indicating a violation of the NAAQS (2006–2008 design value of 48 micrograms per cubic meter ($\mu g/m^3$)).[3] EPA is designating the remainder of Pinal County, Cochise, Gila, Graham, La Paz, Maricopa, Pima, Yavapai, and Yuma counties, and, except as noted below, Indian Country located within those areas, as "unclassifiable/attainment." EPA is deferring designation of the Gila River Indian Community reservation, which is located in Pinal and Maricopa counties adjacent to the new nonattainment area, and the Ak-Chin Indian Community reservation, which is surrounded by the newly designated nonattainment portion of Pinal County, to allow for the completion of the Tribal consultation process.

In October of 2009, EPA notified the Governor of Arizona and Tribal leaders of Tribes with lands located in Pinal and Maricopa counties that a monitor in Pinal County was violating the 2006 24-hour $PM_{2.5}$ standards based on the most recent (2006–2008) air quality monitoring data. Due to this new violation, and due to the need for additional time to collect data and evaluate the area to determine an appropriate nonattainment area boundary, EPA decided to defer the area designation of Pinal County, Maricopa County (the other county comprising the Phoenix-Mesa-Scottsdale core-based statistical area (CBSA)), and the seven nearby counties (Cochise, Gila, Graham, La Paz, Pima, Yavapai, and Yuma Counties) surrounding the Phoenix-Mesa-Scottsdale CBSA,[4] for the 2006 24-hour $PM_{2.5}$ standards.

EPA then followed the designations process set forth in section 107(d) of the CAA which included sending letters in April and May of 2010 to affected States and Tribes notifying them of EPA's intentions with respect to potential modification of the initial designation recommendations of the State or Tribe. EPA also followed the guidance issued in June of 2007 related to boundary determinations for nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS.[5] In keeping with this guidance, EPA completed a 9-factor analysis[6] documented in the final *Pinal County, Arizona Area Designation for the 2006 24-hour Fine Particle National Ambient Air Quality Standard Technical Support Document* dated May 5, 2010, and supplemented by the *Addendum to EPA's May 5, 2010 Technical Support Document: Pinal County, Arizona Area Designation for the 2006 24-hour Fine Particle National Ambient Air Quality Standard.*

In a letter dated July 19, 2010, the Governor of Arizona responded to EPA's May 10, 2010 notification of the need for a modification to the State's initial designation in order to designate a portion of Pinal County "nonattainment" for the 2006 24-hour $PM_{2.5}$ NAAQS. The Governor disagreed with EPA's modification, but also provided a revised recommendation with a suggested boundary for the nonattainment area in Pinal County. This revised recommendation from the State was smaller than the boundary EPA originally proposed in its May 5, 2010 Technical Support Document. In support of the Governor's alternative boundary, the Arizona Department of Environmental Quality (ADEQ)

[1] By "State lands" we mean all land within the State boundary that is not within Indian County, including privately and Federally owned land.

[2] 2007–2009 data also show the area to be in violation of the 2006 24-hour $PM_{2.5}$ NAAQS.

[3] 2007–2009 data also show this area to be in violation of the 2006 24-hour $PM_{2.5}$ NAAQS, with a 2007–2009 design value of 40 $\mu g/m^3$.

[4] As described in EPA's rule promulgating initial $PM_{2.5}$ designations for the 2006 24-hour standards, in evaluating areas potentially contributing to a monitored violation, EPA examined those counties located in the surrounding metropolitan statistical area (in this case, Pinal and Maricopa counties), and those nearby counties one or two adjacent rings beyond. *See* "Air Quality Designations for the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards," 74 FR 58688, November 13, 2009, page 58694.

[5] "Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standards," memorandum to Regional Administrators, Regions 1–10, from Robert J. Meyers, Acting Assistant Administrator, OAR, dated June 8, 2007.

[6] The 9-factor analysis includes assessment of emission data, air quality data, population density and degree of urbanization, traffic and commuting patterns, growth rates and patterns, meteorology (weather/transport patterns), geography/topography (mountain ranges or other air basin boundaries), jurisdictional boundaries (*e.g.*, counties, air districts, Reservations, metropolitan planning organizations), and level of control of emission sources.

submitted a technical report entitled *Arizona Air Quality Designations, Technical Support Document, Boundary Recommendation for the Pinal County 24-hour Standard* $PM_{2.5}$ Nonattainment Area dated July 13, 2010 (ADEQ's technical report).

EPA has reviewed the Governor's July 19, 2010 letter and ADEQ's technical report and with this action is finalizing a revised boundary determination that includes the sources of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions that contribute to air quality violations at the violating monitor. The final partial Pinal County, Arizona nonattainment area remains larger than the area recommended in the July 19, 2010 letter from the Governor but now excludes the Table Top Wilderness Area. Upon further analysis, and consistent with the State's recommendation, we have determined that this wilderness area does not contain sources of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions contributing to the exceedances of the NAAQS measured at the violating monitor.

All correspondence and supporting documentation related to deferred final designations can be found in docket ID No. EPA–HQ–OAR–2007–0562.

*Designations for the Plumas County, California, and Shasta County, California, areas based on 2006–2008 data.* After further review of air quality monitoring data, including an evaluation of submitted exceptional event claims, EPA is designating as "unclassifiable/attainment" the remaining two areas for which the initial air quality designation was deferred for the 2006 24-hour $PM_{2.5}$ NAAQS.

As described in the November 13, 2009 notice, the monitors located in two areas, Plumas County, California (2006–2008 24-hour design value of 49 $\mu g/m^3$) and Shasta County, California (2006–2008 24-hour design value of 48 $\mu g/m^3$) appeared to be in violation of the 2006 24-hour $PM_{2.5}$ NAAQS with the inclusion of 2008 monitoring data. In light of this new data indicating a violation, EPA decided to take additional time to evaluate the areas to determine whether there was a violation and, if so, what the nonattainment area boundaries should be for such areas. EPA determined that this additional time would also permit the Agency and California to confer on appropriate area boundaries in accordance with the process contemplated in section 107(d). In addition, the California Air Resources Board (CARB) had submitted exceptional event claims that, if concurred upon by EPA, had the potential to impact the designations for the two identified areas.

Further evaluation of the monitoring data from Plumas County and Shasta County indicate that these areas were not violating the 2006 24-hour $PM_{2.5}$ NAAQS based on 2006–2008 data, due to exceptional events that affected the monitors. On March 22, 2007, EPA adopted a final rule, *Treatment of Data Influenced by Exceptional Events* (72 FR 13560), also known as the Exceptional Events Rule (EER), to govern the review and handling of certain air quality monitoring data for which the normal planning and regulatory processes are not appropriate. Under the EER, EPA may exclude data from use in determinations of NAAQS exceedances and violations if a State demonstrates that an "exceptional event" caused the exceedances. Before EPA can exclude data from these regulatory determinations, the State must flag the data in EPA's Air Quality System (AQS) database and, after notice and opportunity for public comment, submit a demonstration to justify the exclusion. After considering the weight of evidence provided in the demonstration, EPA decides whether or not to concur with each flagged value.

On June 17, 2009, CARB submitted a preliminary demonstration for a high $PM_{2.5}$ event that occurred at the Plumas County Portola monitor on July 8, 2007. Additional clarification concerning this event was submitted to EPA via e-mail on December 22, 2009. On August 28, 2009, CARB submitted additional event-related preliminary demonstration documentation for high $PM_{2.5}$ events that occurred at various monitoring locations throughout California on 27 separate days during the summer of 2008. Additional clarification concerning these events was submitted to EPA via e-mail on January 19, 2010 and January 26, 2010.

EPA reviewed these demonstration submittals, and subsequently concurred, that specific wildfire-related events caused exceedances of the 24-hour $PM_{2.5}$ standard on July 8, 2007 at the Portola monitor in Plumas County; at the Redding, Shasta County monitor on June 23, June 29, July 5, July 17, and July 23, 2008; at the Portola, Plumas County monitor on June 23, June 26, July 11, and July 23, 2008; and at the Quincy, Plumas County monitor on June 23, June 26, July 8, July 11, and July 19, 2008.[7] [8] EPA's evaluation of these events is documented in the *Review of Evidence Regarding Claimed Exceptional Events Leading to 24-hour* $PM_{2.5}$ *Exceedances: Plumas County, CA (July 8, 2007)* technical support document dated March 11, 2010, the *Review of Evidence Regarding Claimed Exceptional Events Leading to 24-hour* $PM_{2.5}$ *Exceedances: Shasta County, CA (June 23, 2008 and July 23, 2008) and Plumas County, CA (June 23, 2008; June 26, 2008; July 11, 2008; July 19, 2008; and July 23, 2008)* technical support document dated March 11, 2010, and the *Review of Evidence Regarding Claimed Exceptional Events Leading* to 24-hour $PM_{2.5}$ Exceedances: *Shasta County, CA (June 29, 2008; July 5, 2008; and July 17, 2008) and Plumas County, CA (June 26, 2008; July 8, 2008; and July 11, 2008)* technical support document dated March 30, 2010.

Concurrence on these events resulted in revised 2006–2008 design values for Plumas County, California (2006–2008 24-hour design value of 34 $\mu g/m^3$) and for Shasta County, California (2006–2008 24-hour design value of 24 $\mu g/m^3$). Because the monitoring data for Plumas County and Shasta County are below the level of the NAAQS, EPA has determined that the initial designation for these counties should be "unclassifiable/attainment." As a result of these two counties being in attainment of these NAAQS, other nearby counties for which we had deferred designations are not contributing to any violation of the NAAQS in a nearby area. Accordingly, EPA has determined that an initial designation of "unclassifiable/attainment" is appropriate for the counties of Butte, Lassen, Shasta, Sierra, Tehama and Yuba (nearby to Plumas) and for Lassen, Modoc, Plumas, Siskiyou, Tehama, and Trinity (nearby to Shasta) for the 2006 24-hour $PM_{2.5}$ NAAQS.[9]

## IV. 110(k)(6) Error Correction Related to the 2006 24-Hour $PM_{2.5}$ NAAQS Designations

This action includes a 110(k)(6) error correction related to the designation classification for Ravalli, Montana. In the November 13, 2009 action, Ravalli, Montana was designated as "unclassifiable" rather than "unclassifiable/attainment." This error was the result of incorrectly processing and calculating the ambient air monitoring data for Ravalli, Montana. The errant calculations resulted in the inaccurate designation of

[7] Letter from Jared Blumenfeld, Regional Administrator, EPA Region 9, to Mary D. Nichols, California Air Resources Board, dated March 11, 2010.

[8] Letter from Jared Blumenfeld, Regional Administrator, EPA Region 9, to Mary D. Nichols, California Air Resources Board, dated April 2, 2010.

[9] 2007–2009 data also show Shasta and Plumas Counties in attainment of the 2006 24-hour $PM_{2.5}$ NAAQS with 2007–2009 design values of 21 $\mu g/m^3$ (Shasta County) and 34 $\mu g/m^3$ (Plumas County).

"unclassifiable." Once the appropriate data substitutions were made and the data were recalculated, we determined that the designation should have been "unclassifiable/attainment." The correction made by EPA in this action is identified in the table at the end of this notice and the change will be reflected in a revision of 40 CFR part 81.

### V. Technical Correction Related to the 2006 24-Hour $PM_{2.5}$ NAAQS Designations

In this rule, EPA is also making a minor technical correction to the name of the Knoxville, Tennessee nonattainment area included in the November 13, 2009 action (74 FR 58688). The name of the Knoxville, Tennessee nonattainment area is being changed in 40 CFR part 81 to be the Knoxville-Sevierville-La Follette, Tennessee nonattainment area to correspond with the name of the CBSA and to provide an accurate area name in the Code of Federal Regulations. The correction made by EPA in this action is identified in the table at the end of this notice and the change will be reflected in a revision of 40 CFR part 81.

### VI. What is the status of possible redesignations to nonattainment for Harris County, Texas, and Pinal County, Arizona, for the 1997 annual $PM_{2.5}$ NAAQS?

When EPA promulgated the initial air quality designations in the November 13, 2009 notice (74 FR 58688), we announced that our review of quality assured, certified air quality monitoring data for 2006–2008 indicated that two counties designated "unclassifiable/attainment" for the 1997 annual $PM_{2.5}$ NAAQS of 15 μg/m³ had monitors that were now potentially violating that NAAQS. The potentially violating counties were identified as Pinal County, Arizona (2006–2008 annual average design value of 21.6 μg/m³) and Harris County, Texas (2006–2008 annual average design value of 15.2 μg/m³). Upon further review, EPA is announcing in this action that we are retaining the designation of "unclassifiable/attainment" for both areas. The rationale for these decisions is provided below.

In Pinal County, Arizona, EPA identified the "Cowtown" monitor (AQS ID: 04–021–3013) as the monitor potentially violating the 1997 annual $PM_{2.5}$ NAAQS. However, EPA has subsequently concluded that the monitor in question is not suitable for determining compliance with these NAAQS. As documented in EPA's *Technical Support Document for Determination that the Cowtown Monitor is Ineligible for Comparison with the Annual $PM_{2.5}$ NAAQS* dated April 26, 2010, EPA evaluated the comparability of data from the Cowtown site to the 1997 annual $PM_{2.5}$ standard on four criteria: the monitoring objective, the spatial scale of representativeness, localized hot spot conditions, and the uniqueness of the site. EPA determined that data from the Cowtown monitor are ineligible for comparison to the annual $PM_{2.5}$ NAAQS because the monitor functions as a population-oriented microscale (*i.e.,* localized hot spot) monitor. EPA regulations provide that monitors at "relatively unique population-oriented microscale, or localized hot spot, or unique population-oriented middle-scale impact sites" are only eligible for comparison to the 24-hour $PM_{2.5}$ NAAQS, not the annual $PM_{2.5}$ NAAQS (40 CFR 58.30). No other monitoring site in Pinal County has shown a violation of the 1997 annual $PM_{2.5}$ NAAQS in either the 2006–2008 or 2007–2009 timeframes. In the absence of monitoring data suitable for comparison to the 1997 annual $PM_{2.5}$ NAAQS showing a violation of that standard, EPA has determined that it is appropriate to retain the current designation of "unclassifiable/attainment" for Pinal County, Arizona for these NAAQS.[10]

In Harris County, Texas, EPA identified the "Clinton Drive" monitor (AQS ID: 48–201–1035) as potentially violating the 1997 annual $PM_{2.5}$ NAAQS. However, EPA has determined that monitor is no longer violating the 1997 annual $PM_{2.5}$ NAAQS based on a review of complete, quality-assured, certified 2007–2009 data resulting in an annual average design value of 14.1 μg/m³. On October 8, 2009, EPA Region 6 notified the Governor of Texas of EPA's intention to designate Harris County, Texas as "nonattainment" for the 1997 annual $PM_{2.5}$ NAAQS based on 2006–2008 monitoring data and requested that the State provide recommendations for the intended redesignation. As part of the review and recommendation process, Texas completed an expedited review and submittal of 2009 air quality monitoring data into AQS. The result of this additional data was the recalculation of Harris County, Texas design values based on 2007–2009 complete, quality-assured, certified data for 2007–2009. In a letter dated February 4, 2010, to the Region 6 EPA Regional Administrator, the Governor of Texas subsequently recommended that all areas in Texas that have monitors with data eligible for comparison to the 1997 annual $PM_{2.5}$ NAAQS be classified as unclassifiable/attainment. Because EPA believes that inclusion of the most recent air quality monitoring data available is appropriate for redesignation decisions, EPA agreed with the State's unclassifiable/attainment recommendation for Harris County, Texas and, with this action, announces its decision to retain the current unclassifiable/attainment status for Harris County, Texas for the 1997 annual $PM_{2.5}$ NAAQS.[11]

All correspondence and supporting documentation related to the potential redesignations for the 1997 annual $PM_{2.5}$ NAAQS can be found in docket ID No. EPA–HQ–OAR–2010–0163.

### VII. Significance of This Action

In accordance with the foregoing discussion, EPA is promulgating the initial designations for the 2006 24-hour $PM_{2.5}$ NAAQS for certain areas in Arizona and California. EPA is also making two corrections related to the 2006 24-hour $PM_{2.5}$ NAAQS designations. The first correction is a 110(k)(6) error correction related to the designation classification for Ravalli, Montana. The second correction involves a technical correction to the name of the Knoxville, Tennessee nonattainment area included in the November 13, 2009 action. Finally, EPA is determining that it is not necessary to redesignate areas in Texas and Arizona to nonattainment for the 1997 annual $PM_{2.5}$ NAAQS.

The designations and corrections made by EPA in this action with respect to the 2006 24-hour $PM_{2.5}$ NAAQS relate to the other designations that EPA promulgated in the November 13, 2009 action (74 FR 58688). The designations and corrections made by EPA in this rule, related to the 24-hour $PM_{2.5}$ standard, are set forth in the tables at the end of this notice and will change the designation status or area description for the affected areas in 40 CFR part 81 initially announced in the November 13, 2009, action. States with areas designated as "nonattainment" for the 24-hour $PM_{2.5}$ NAAQS are required to submit SIPs addressing nonattainment area requirements within three years of designation, pursuant to section 172 of the CAA. Therefore, within three years following the March 7, 2011 effective date for the designations identified in this rulemaking, Arizona will be required to

[10] 2007–2009 data show that all other Pinal County monitors are in attainment of the 1997 annual $PM_{2.5}$ NAAQS.

[11] Letter from Al Armendariz, Regional Administrator, EPA Region 6, to Rick Perry, Governor of Texas, dated April 28, 2010.

submit a SIP for the Pinal County nonattainment area.

**VIII. Where can I find information forming the basis for this rule and exchanges between EPA, States, and Tribes related to this rule?**

Information providing the basis for the actions and decisions in this notice, including Technical Support Documents, applicable EPA guidance memoranda, and copies of correspondence regarding this process between EPA and the States and Tribes are available in the identified dockets. All docket information is available for review at the EPA Docket Center listed above in the **ADDRESSES** section of this document and on our designation Web site at *http://www.epa.gov/pmdesignations/2006standards/index.htm.* Other related State-specific information is available at the EPA Regional Offices.

**IX. Statutory and Executive Order Reviews**

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, EPA assigns designations to areas as required.

*A. Executive Order 12866: Regulatory Planning and Review*

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of title 1. The present final rule does not establish any new information collection apart from that required by law.

*C. Regulatory Flexibility Act*

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because the rule is not subject to the APA and is subject to CAA section 107(d)(2)(B), which does not require that the Agency issue a notice of proposed rulemaking before issuing this rule.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the $PM_{2.5}$ NAAQS (40 CFR 50.13), therefore, no UMRA analysis is needed. This rule establishes the application of the $PM_{2.5}$ standard and the designation for each area of the country for the $PM_{2.5}$ NAAQS. The CAA requires States to develop plans, including control measures, based on their designations and classifications.

One mandate that may apply as a consequence of this action to the portion of Pinal County, Arizona being designated as "nonattainment" is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and Metropolitan Planning Organizations making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

Nonetheless, EPA carried out consultation with government entities affected by this rule, including States, Tribal governments, and local air pollution control agencies.

*E. Executive Order 13132: Federalism*

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

This final rule does not have federalism implications. 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. The CAA establishes the process whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 2, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule concerns the designation and classification of areas as "attainment" and "nonattainment" for the 2006 24-hour $PM_{2.5}$ NAAQS. The CAA provides for States and eligible Tribes to develop plans to regulate emissions of air pollutants within their areas based on their designations. The Tribal Authority Rule (TAR) provides Tribes the opportunity to apply for eligibility to develop and implement CAA programs such as programs to attain and maintain the $PM_{2.5}$ NAAQS, but it leaves to the discretion of the Tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the Tribe will seek to adopt. This rule does

not have a substantial direct effect on one or more Indian Tribes. It does not create any additional requirements beyond those of the $PM_{2.5}$ NAAQS (40 CFR section 50.13). This rule establishes the application of the $PM_{2.5}$ standard and the designation and classification for certain areas of the country for the $PM_{2.5}$ NAAQS. Additionally, no Tribe has implemented a CAA program to attain the $PM_{2.5}$ NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA communicated with Tribal leaders and environmental staff regarding the designations process. EPA also sent individualized letters to all Federally recognized Tribes to explain the designation process for the 2006 24-hour $PM_{2.5}$ NAAQS, to provide the EPA designations guidance, and to offer consultation with EPA. EPA provided further information to Tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. EPA also sent individualized letters to all Federally recognized Tribes about EPA's intended areas area designations for the 24-hour $PM_{2.5}$ standards and offered Tribal leaders the opportunity for consultation. These communications provided opportunities for Tribes to voice concerns to EPA about the general designations process for the 24-hour $PM_{2.5}$ NAAQS, as well as concerns specific to a Tribe, and informed EPA about key Tribal concerns regarding designations as the rule was under development.

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

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the $PM_{2.5}$ NAAQS on children. The results of this risk assessment are contained in the NAAQS for the 2006 24-hour $PM_{2.5}$, Final Rule (October 17, 2006, 71 FR 61144).

*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 of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. 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 EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule does not affect the level of protection provided to human health or the environment.

*K. Congressional Review Act*

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 U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. 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). This rule will be effective March 7, 2011.

*L. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have jurisdiction for petitions for review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." EPA is determining that this action is of nationwide scope and effect.

This rule designating areas for the 2006 24-hour $PM_{2.5}$ NAAQS is "nationally applicable" within the meaning of section 307(b)(1). This rule establishes or corrects designations for several areas across the U.S. for the 2006 24-hour $PM_{2.5}$ NAAQS. In addition, this action relates to the prior nationwide rulemaking in which EPA promulgated designations for numerous other areas nationwide. At the core of this rulemaking is EPA's interpretation of the definition of "nonattainment" under section 107(d)(1) of the CAA. In determining which areas should be designated "nonattainment" (or conversely, should be designated attainment or unclassifiable), EPA used an analytical approach that it applied consistently across the U.S. in this rulemaking, and in the prior related rulemaking.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or

effect" would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to multiple judicial circuits because the designations apply to various areas of the country. Proceeding with litigation in multiple circuits would waste judicial, agency, and litigant resources, and could lead to inconsistent results. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the DC Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 26, 2011.

**Lisa P. Jackson,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

## PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

## Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.303, the "Arizona—$PM_{2.5}$ (24-hour NAAQS)" table is amended as follows:

■ a. By adding a new entry for "West Central Pinal" after "Santa Cruz County" under "Nogales" to read as set forth below.

■ b. By revising the entry for "Cochise County" to read as set forth below.

■ c. By revising the entry for "Gila County" to read as set forth below.

■ d. By revising the entry for "Graham County" to read as set forth below.

■ e. By revising the entry for "La Paz County" to read as set forth below.

■ f. By revising the entry for "Maricopa County" to read as set forth below.

■ g. By revising the entry for "Pima County" to read as set forth below.

■ h. By revising the entry for "Pinal County" to read as set forth below.

■ i. By revising the entry for "Yavapai County" to read as set forth below.

■ j. By revising the entry for "Yuma County" to read as set forth below.

■ k. By adding entries for "Lands of the Gila River Indian Community in Pinal County" and "Lands of the Ak-Chin Indian Community" after "Yuma County" as set forth below.

**§ 81.303 Arizona.**

* * * * *

ARIZONA—$PM_{2.5}$

[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| * * * | * | * | * | * |
| West Central Pinal: | | | | |
| Pinal County (part) | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Nonattainment. |
| 1. Commencing at a point which is the intersection of the eastern line of Range 1 East, Gila and Salt River Baseline and Meridian, and the northern line of Township 4 South, which is the point of beginning: | | | | |
| 2. Thence, proceed easterly along the northern line of Township 4 South to a point where the northern line of Township 4 South intersects the eastern line of Range 4 East; | | | | |
| 3. Thence, southerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects the northern line of Township 6 South; | | | | |
| 4. Thence, easterly along the northern line of Township 6 South to a point where the northern line of Township 6 South intersects the eastern line of Range 4 East; | | | | |
| 5. Thence, southerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects the southern line of Township 7 South; | | | | |
| 6. Thence, westerly along the southern line of Township 7 South to a point where the southern line of Township 7 South intersects the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of section 34, Range 3 East and Township 7 South; | | | | |

ARIZONA—$PM_{2.5}$—Continued

[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| 7. Thence, northerly along the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of sections 34, 27, 22, and 15, Range 3 East and Township 7 South, to a point where the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of sections 34, 27, 22, and 15, Range 3 East and Township 7 South, intersects the northern line of section 15, Range 3 East and Township 7 South; | | | | |
| 8. Thence, westerly along the northern line of sections 15, 16, 17, and 18, Range 3 East and Township 7 South, and the northern line of sections 13, 14, 15, 16, 17, and 18, Range 2 East and Township 7 South, to a point where the northern line of sections 15, 16, 17, and 18, Range 3 East and Township 7 South, and the northern line of sections 13, 14, 15, 16, 17, and 18, Range 2 East and Township 7 South, intersect the eastern line of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statutes sections 11–109 and 11–113; | | | | |
| 9. Thence, northerly along the eastern line of Range 1 East to the point of beginning which is the point where the eastern line of Range 1 East intersects the northern line of Township 4 South; | | | | |
| 10. Except that portion of the area defined by paragraphs 1 through 9 above that lies in Indian country. | | | | |
| * * * | * | * | * | * |
| Rest of State: | | | | |
| * * * | * | * | * | * |
| Cochise County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Gila County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Graham County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| La Paz County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Maricopa County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Pima County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Pinal County (remainder, excluding lands of the Gila River Indian Community and Ak-Chin Indian Community. | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Yavapai County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| Yuma County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| Lands of the Gila River Indian Community in Pinal County. | ..... | Unclassifiable/Attainment ..... | ..... | Unclassifiable/Attainment. |

ARIZONA—$PM_{2.5}$—Continued
[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| Lands of the Ak-Chin Indian Community in Pinal County. | ..... | Unclassifiable/Attainment ..... | ..... | Unclassifiable/Attainment. |

■ 3. In § 81.305, the "California—$PM_{2.5}$ (24-hour NAAQS)" table is amended as follows:

■ a. By revising the entry for "Trinity County" under the heading of "North Coast Air Basin" to read as set forth below.

■ b. By revising the entries for "Lassen County," "Modoc County," and "Siskiyou County" under the heading of "Northeast Plateau Air Basin" to read as set forth below.

■ c. By revising the entries for "Butte County (remainder)", "Shasta County", "Tehama County", and "Yuba County (remainder)" under the heading "Upper Sacramento Valley Region" to read as set forth below.

■ d. By revising the entries for "Plumas County," and "Sierra County" under the heading "Northern Mountain Counties" to read as set forth below.

**§ 81.305 California.**

* * * * *

CALIFORNIA—$PM_{2.5}$
[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| * * * | * | * | * | * |
| Rest of State: | | | | |
| North Coast Air Basin: | | | | |
| * * * | * | * | * | * |
| Trinity County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| Northeast Plateau Air Basin: | | | | |
| Lassen County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| Modoc County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/ Attainment. |
| Siskiyou County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Upper Sacramento Valley Region: | | | | |
| Butte County (remainder) | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Shasta County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| Tehama County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| Yuba County (remainder) | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/Attainment. |
| * * * | * | * | * | * |
| Northern Mountain Counties: | | | | |
| * * * | * | * | * | * |
| Plumas County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/ Attainment. |
| Sierra County | ..... | Unclassifiable/Attainment ..... | 3/7/11 | Unclassifiable/ Attainment. |
| * * * | * | * | * | * |

■ 4. In § 81.327, the "Montana—$PM_{2.5}$ (24-hour NAAQS)" table is amended as follows:

■ a. By removing the entry for "Ravalli County".

■ b. By removing the heading "Rest of State:" and adding in its place "Statewide" as set forth below.

■ c. By adding a section for "Ravalli County" after "Prairie County" to read as set forth below.

**§ 81.327 Montana.**

* * * * *

MONTANA—$PM_{2.5}$
[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQX [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| Statewide: | | | | |
| * * * | * | * | * | * |
| Ravalli County | | Unclassifiable/Attainment | | Unclassifiable/Attainment. |
| * * * | * | * | * | * |

■ 5. In § 81.343, the "Tennessee—$PM_{2.5}$ (24-hour NAAQS)" table is amended by removing the designated area "Knoxville,TN" and adding in its place "Knoxville-Sevierville-La Follette, TN" to read as follows:

**§ 81.343 Tennessee.**

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TENNESSEE—$PM_{2.5}$
[24-hour NAAQS]

| Designated area | Designation for the 1997 NAAQS [a] | | Designation for the 2006 NAAQS [a] | |
|---|---|---|---|---|
| | Date [1] | Type | Date [2] | Type |
| Knoxville-Sevierville-La Follette, TN. | | | | |
| * * * | * | * | * | * |

[FR Doc. 2011–2269 Filed 2–2–11; 8:45 am]
**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R4–ES–2010–0057; 92220–1113–0000–C3]**

**RIN 1018–AX23**

## Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Endangered Whooping Cranes in Southwestern Louisiana

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), will reintroduce whooping cranes (*Grus americana*) into historic habitat in southwestern Louisiana with the intent to establish a nonmigratory flock. We are designating this reintroduced population as a nonessential experimental population (NEP) under section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. The geographic boundary of the NEP includes the entire State of Louisiana. The objectives of the reintroduction are: to advance recovery of the endangered whooping crane; to implement a primary recovery action; to further assess the suitability of Louisiana as whooping crane habitat; and to evaluate the merit of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. The only natural wild population of whooping cranes remains vulnerable to extirpation through a natural catastrophe or contaminant spill, due primarily to its limited wintering distribution along the Texas gulf coast. If successful, this action will result in the establishment of an additional self-sustaining population, and contribute toward the recovery of the species. No conflicts are envisioned between the whooping crane's reintroduction and any existing or anticipated Federal, State, Tribal, local government, or private actions such as agriculture-aquaculture-livestock practices, oil/gas exploration and extraction, pesticide application, water management, construction, recreation, trapping, or hunting.

**DATES:** This rule is effective February 3, 2011.

**ADDRESSES:** The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517.

**FOR FURTHER INFORMATION CONTACT:** Bill Brooks, Jacksonville Field Office, U.S. Fish and Wildlife Service (904–731–3136, facsimile 904–731–3045), or Deborah Fuller, Lafayette Field Office, U.S. Fish and Wildlife Service (337–291–3100; facsimile 337–291–3139).

**SUPPLEMENTARY INFORMATION:**

### Background

*Previous Federal Actions*

The whooping crane (*Grus americana*) was listed as an endangered species on March 11, 1967 (32 FR 4001). We have previously designated NEPs for whooping cranes in Florida (58 FR 5647, January 22, 1993); the Rocky Mountains (62 FR 38932, July 21, 1997); and the Eastern United States (66 FR 33903, June 26, 2001). On August 19, 2010, we proposed designating Louisiana as a NEP to reintroduce a nonmigratory population in southwestern Louisiana (75 FR 51223). *See also* "Recovery Efforts" below.

Legislative

Congress made significant changes to the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), with the addition in 1982 of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Under the ESA, species listed as endangered or threatened are afforded protection largely through the prohibitions of section 9 and the

requirements of section 7 and corresponding implementing regulations.

Section 7 of the ESA outlines the procedures for Federal interagency cooperation to conserve Federally listed species and protect designated critical habitats. Under Section 7(a)(1), all Federal agencies are mandated to determine how to use their existing authorities to further the purposes of the ESA to aid in recovering listed species. Section 7(a)(2) states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. A threatened designation allows us discretion in devising management programs and special regulations for such a population. Section 9 of the ESA prohibits the take of endangered species. "Take" is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Section 4(d) of the ESA allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. When we promulgate a section 10(j) rule for a species, the general regulations that extend most section 9 prohibitions to threatened species do not apply as the 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Based on the best available information, we must determine whether experimental populations are "essential" or "nonessential" to the continued existence of the species. Both an experimental population that is essential to the survival of the species and an experimental population that is not essential to the survival of the species are treated as a threatened species. However, for section 7 interagency cooperation purposes, if a nonessential experimental population ("NEP") is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the ESA, in situations where an NEP is located within a National Wildlife Refuge or National Park, the NEP is treated as threatened, and all provisions of ESA section 7, including section 7(a)(1) and the consultation requirements of section 7(a)(2), apply.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, we treat the population as proposed for listing, and only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. However, since an NEP is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP. Regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of individuals from donor populations for release is not likely to jeopardize the continued existence of the species in the wild.

*Biological Information*

The whooping crane is a member of the family Gruidae (cranes). It is the tallest bird in North America; males approach 1.5 meters (m) (5 feet (ft)) tall. In captivity, adult males average 7.3 kilograms (kg) (16 pounds (lb)) and females 6.4 kg (14 lbs). Adult plumage is snowy white except for black primary feathers, black or grayish alulae, sparse black bristly feathers on the carmine (red) crown and malar region (side of the head), and a dark gray-black wedge-shaped patch on the nape.

Adults are potentially long-lived. Current estimates suggest a maximum longevity in the wild of 32 years (Stehn, USFWS, 2010 pers comm.). Captive individuals are known to have survived 27 to 40 years. Mating is characterized as perennially monogamous (remaining paired for multiple years); however, new pair bonds can be formed following death or other interruptions in the pair bond. Fertile eggs are occasionally produced at age 3 years but more typically at age 4. Experienced pairs may not breed every year, especially when habitat conditions are poor. Whooping cranes ordinarily lay two eggs. They will renest if their first clutch is destroyed or lost before mid-incubation (Erickson and Derrickson 1981, p. 108; Kuyt 1981, p. 123). Although two eggs are laid, whooping crane pairs infrequently fledge two chicks (Canadian Wildlife Service and U.S. Fish and Wildlife Service 2007, p. 6). Approximately one of every four hatched chicks survives to reach the wintering grounds (U.S. Fish and Wildlife Service 1994, p. 14).

The whooping crane once occurred from the Arctic Sea to the high plateau of central Mexico, and from Utah east to New Jersey, South Carolina, and Florida (Allen 1952, p. 1; Nesbitt 1982, p. 151). In the 19th century, the principal breeding range extended from central Illinois northwest through northern Iowa, western Minnesota, northeastern North Dakota, southern Manitoba, and Saskatchewan to the vicinity of Edmonton, Alberta. There was also a nonmigratory population breeding in coastal Louisiana (Allen 1952, p. 28; Gomez 1992, p. 19).

Banks (1978, p. 1) derived estimates that there were 500 to 700 whooping cranes in 1870. By 1941, the migratory population contained only 16 individuals. The whooping crane population decline between these two estimates was a consequence of hunting and specimen collection, human disturbance, and conversion of the primary nesting habitat to hay, pastureland, and grain production (Allen 1952, p. 28; Erickson and Derrickson 1981, p. 108).

Allen (1952, pp. 18–40, 94) described several historical migration routes. One of the most important led from the principal nesting grounds in Iowa, Illinois, Minnesota, North Dakota, and Manitoba to coastal Louisiana. Other historic Gulf coast wintering locations included Mobile Bay in Alabama, and Bay St. Louis in Mississippi. A route from the nesting grounds in North Dakota and the Canadian Provinces went southward to the wintering areas of Texas and the Rio Grande Delta

region of Mexico. Another migration route crossed the Appalachians to the Atlantic Coast.

Gomez (1992, p. 19) summarized the literary references regarding whooping cranes in southwestern Louisiana. This summary included Olmsted's mention of an "immense white crane" on the prairies of Louisiana (1861, p. 31), Nelson (1929, pp. 146–147) reporting on wintering whooping cranes near Pecan Island, and McIlhenny (1938, p. 670) describing the small flock of resident cranes at Avery Island and speculating on the reasons for the species' decline. Simons (1937, p. 220) included a photograph; Allen (1950, pp. 194–195) and Van Pelt (1950, p. 22) recounted the capture of the last member of the Louisiana nonmigratory flock. Allen's whooping crane monograph (1952) is the main source on whooping crane ecology in southwest Louisiana.

Records from more interior areas include the Montgomery, Alabama, area; Crocketts Bluff on the White River, and a site near Corning in Arkansas; Missouri sites in Jackson County near Kansas City, in Lawrence County near Corning, southwest of Springfield in Audrain County, and near St. Louis; and Kentucky sites near Louisville and Hickman. It is unknown whether these records represent wintering locations, remnants of a nonmigratory population, or wandering birds.

*Status of Current Populations*

Whooping cranes currently exist in three wild populations and within a captive breeding population at 12 locations. The first population, and the only self-sustaining natural wild population, nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of Wood Buffalo National Park. These birds winter along the central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge (NWR) and adjacent areas (referred to later as the Aransas-Wood Buffalo population, or AWBP). From their nesting areas in Canada, these cranes migrate southeasterly through Alberta, Saskatchewan, and eastern Manitoba, stopping in southern Saskatchewan for several weeks in fall migration before continuing migration into the United States. They migrate through the Great Plains States of eastern Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. The winter habitat extends 50 kilometers (km) (31 miles) along the Texas coast, from San Jose Island and Lamar Peninsula on the south to Welder Point and Matagorda Island on the north, and consists of estuarine marshes, shallow bays, and tidal flats (Allen 1952, p. 127; Blankinship 1976, p. 384). Their spring migration is more rapid, and they simply reverse the route followed in fall. The AWBP flock is recovering from a population low of 15 or 16 birds in 1941. The natural AWBP flock was estimated to be around 500–700 individuals around 1870 and in 1944 it numbered 18 birds. This notable decline in numbers was due in large part to human related impacts like hunting and wetland loss. Through extensive protection and recovery efforts, the AWBP flock has slowly increased over time. In 2005, the population had 220 individuals. The population continues to grow with 247 cranes observed in the spring of 2009 and 263 in the spring of 2010. With 46 chicks fledging from a record high of 74 nests in August 2010, the flock size could reach a record level of around 285 whooping cranes in the spring of 2011.

The second population, the Florida Nonmigratory Population, is found in the Kissimmee Prairie area of central Florida (*see* Recovery Efforts section for further details on this population and the Eastern Migratory Population). Between 1993 and 2004, 289 captive-born, isolation-reared whooping cranes were released into Osceola, Lake, and Polk Counties in an effort to establish this nonmigratory flock. The last releases took place in the winter of 2004–2005. As of November 2010, only 21 individuals were being monitored, which included 8 pairs. Since the first nest attempt in 1999, there have been a total of 81 nest attempts, from which 37 chicks hatched and only 11 chicks successfully fledged. Problems with survival and reproduction, both of which have been complicated by drought, are the factors that led to the 2009 decision not to release additional whooping cranes into this population.

The third population of wild whooping cranes is referred to as the Eastern Migratory Population (EMP). The EMP has been established through reintroduction, and, with the November 2010 addition of 11 released whooping cranes, the population numbers 105 individuals. During the 2010 spring breeding season, all early nests of the season were abandoned, as have all first nests during the previous years. There were 12 nesting pairs in 2010; 5 of those pairs hatched 7 chicks, 2 pairs successfully fledged a chick. Nesting failure is currently the EMP's foremost concern. There is compelling evidence of a correlation between the presence of biting insects and nesting failure, suggesting that biting insects may play a role in nest abandonment (Stehn, USFWS, 2009 pers. com.).

The whooping crane also occurs in a captive-breeding population. The whooping crane captive-breeding program, initiated in 1967, has been very successful. The Service and the Canadian Wildlife Service began taking eggs from the nests of the wild population (AWBP) in 1967, and raising the resulting young in captivity. Between 1967 and 1998, program officials took 242 eggs from the wild to captive sites. Birds raised from those eggs form the nucleus of the captive flock (USFWS 2007, p. C–2). The captive-breeding population is now kept at five captive-breeding centers: Patuxent Wildlife Research Center in Patuxent, Maryland; the International Crane Foundation in Baraboo, Wisconsin; the Devonian Wildlife Conservation Center, Calgary Zoo, in Alberta, Canada; the Audubon Species Survival Center in New Orleans, Louisiana; and the San Antonio Zoo, Texas. The total captive population as of January 2010 stands near 150 birds in the captive-breeding centers and at other locations for display (Calgary Zoo in Alberta, Canada; Lowery Park Zoo in Tampa, Florida; Homosassa Springs State Wildlife Park in Homosassa, Florida; Jacksonville Zoo and Gardens in Jacksonville, Florida; Audubon Zoo in New Orleans, Louisiana; Milwaukee Zoo in Milwaukee, Wisconsin; and Sylvan Heights Waterfowl Park in Scotland Neck, North Carolina).

Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds, leaving little possibility of pioneering into new regions. The only wild, self-sustaining breeding population can be expected to continue utilizing its current nesting location with little likelihood of expansion, except on a local geographic scale. The wintering area is expected to expand slowly north and south from Aransas along the Gulf Coast. This population remains vulnerable to extirpation from a natural catastrophe, a red tide outbreak, a contaminant spill, and sea level rise due primarily to its limited wintering distribution along the Gulf Intracoastal Waterway of the Texas coast. This waterway experiences some of the heaviest barge traffic of any waterway in the world. Much of the shipping tonnage is petrochemical products. An accidental spill could destroy whooping cranes, their habitat, and/or their food resources. With the only wild breeding population (AWBP) being vulnerable, it is urgent that additional wild self-sustaining populations be established.

There have been three reintroduction projects to date. Reintroduction using cross-fostering with sandhill cranes

(*Grus canadensis*) in the Rocky Mountains occurred during the period 1973–1988, and was discontinued due to excessive mortality and failure of the birds to pair and breed. No cranes remain in this population. The Florida nonmigratory population numbers 21 birds (9 males, 12 females). Only two pairs attempted to breed during the 2009 drought, and one pair fledged a chick. In 2010, there were nine nests and one pair fledged a chick. Currently, the EMP numbers 105 whooping cranes. Twelve pairs nested in 2010 and two pairs fledged a chick.

*Recovery Efforts*

The first recovery plan developed by the Whooping Crane Recovery Team (Recovery Team) was approved January 23, 1980. The first revision was approved on December 23, 1986; the second revision on February 11, 1994; and the third revision on May 29, 2007 (viewable at *http://www.fws.gov/endangered/*). The short-term goal of the recovery plan, as revised, is to reclassify the whooping crane from endangered to threatened status. The criteria for attaining this reclassification goal are: (1) Achieving a population level of 40 nesting pairs in the AWBP; and (2) establishing two additional, separate, and self-sustaining populations consisting of 25 nesting pairs each. These new populations may be migratory or nonmigratory. If only one additional wild self-sustaining population is reestablished, then the AWBP must reach 100 nesting pairs and the new population must consist of 30 nesting pairs. If the establishment of two additional wild self-sustaining populations is not successful, then the AWBP must be self-sustaining and remain above 250 nesting pairs for reclassification to occur. The recovery plan recommends that these goals should be attained for 10 consecutive years before the species is reclassified to threatened.

In 1985, the Director-General of the Canadian Wildlife Service and the Director of the Service signed a memorandum of understanding (MOU) entitled "Conservation of the Whooping Crane Related to Coordinated Management Activities." The MOU was revised and signed again in 1990, 1995, and 2001. It discusses disposition of birds and eggs, postmortem analysis, population restoration and objectives, new population sites, international management, recovery plans, consultation, and coordination. All captive whooping cranes and their future progeny are jointly owned by the Service and the Canadian Wildlife Service. Consequently, both nations are involved in recovery decisions.

*Reintroductions*

In early 1984, pursuant to the Recovery Plan goals and the recommendation of the Recovery Team, potential whooping crane release areas were selected in the eastern United States. By 1988, the Recovery Team recognized that cross-fostering with sandhill cranes was not working to establish a migratory population in the Rocky Mountains. The term "cross-fostering" refers to the foster rearing of the whooping crane chicks by another species, the sandhill crane. The possibility of inappropriate sexual imprinting associated with cross-fostering, and the lack of a proven technique for establishing a migratory flock, influenced the Recovery Team to favor establishing a nonmigratory flock.

Studies of whooping cranes (Drewien and Bizeau 1977, pp. 201–218) and greater sandhill cranes (Nesbitt 1988, p. 44) have shown that, for these species, knowing when and where to migrate is learned rather than innate behavior. Captive-reared whooping cranes released in Florida were expected to develop a sedentary population. In summer 1988, the Recovery Team selected Kissimmee Prairie in central Florida as the area most suitable to establish a self-sustaining population. In 1993, the Florida Fish and Wildlife Conservation Commission (FWC) (formerly the Florida Game and Freshwater Fish Commission) began releasing chicks from the captive-breeding population in an attempt to establish a resident, nonmigratory flock. Eggs laid at the captive-breeding facilities were sent to the Patuxent Wildlife Research Center to be hatched and reared in isolation. The chicks were brought to Florida in the fall where they were "gentle released," a technique that involves a protracted period of acclimation in a specially constructed release pen followed by a gradual transition to life on their own in the wild. This release methodology has helped to establish a wild resident nonmigratory flock of whooping cranes in central Florida.

In 1996, the Recovery Team decided to investigate the potential for another reintroduction site in the eastern United States, with the intent of establishing an additional migratory population as the third flock to meet recovery goals. Following a study of potential wintering sites (Cannon 1998, pp. 1–19), the Recovery Team selected the Chassahowitzka NWR/St. Martin's Marsh Aquatic Preserve in Florida as the top wintering site for a new migratory flock of whooping cranes. A detailed analysis was presented at the Recovery Team meeting in September 1999 (Cannon 1999, pp. 1–38), and the Recovery Team then recommended that releases for an EMP target central Wisconsin at Necedah NWR as the core breeding area, with the wintering site along the Gulf coast of Florida at the Chassahowitzka NWR.

In January 2001, the Recovery Team met at the Audubon Center for Research on Endangered Species in Belle Chasse, Louisiana. Highlights of the meeting included genetic management recommendations for the captive flock, an overflight of crane habitat in southwestern Louisiana, including the White Lake and Marsh Island areas, and the recommendation to proceed with a migratory reintroduction of whooping cranes in the eastern United States. Following the Recovery Team meeting, the Louisiana Crane Working Group was formed to help with research and information needed to assess the potential for releasing whooping cranes in Louisiana.

In the spring of 2001, eggs laid at the captive-breeding facilities were sent to the Patuxent Wildlife Research Center to be hatched and reared in the spring. The chicks were brought to the Necedah NWR in central Wisconsin in the early summer and were trained to fly behind ultralight aircraft by Operation Migration. In the fall of 2001, the Whooping Crane Eastern Partnership's (WCEP) first historic whooping crane migration led by ultralights from central Wisconsin to the central Gulf coast of Florida was completed by Operation Migration. This release methodology has established a wild migrating flock of whooping cranes, with a core breeding/summering area at Necedah NWR in central Wisconsin and a primary wintering area in west-central Florida (Pasco and Citrus Counties and Paynes Prairie in Alachua County). Portions of this population also winter at Hiwassee Wildlife Refuge in central Tennessee, Wheeler NWR in northern Alabama, and the Ashepoo, Combahee, and South Edisto Basin (ACE Basin) in coastal South Carolina. Since 2005, additional captive chicks reared at the International Crane Foundation have been released directly into groups of older whooping cranes in central Wisconsin prior to the fall to follow older cranes during migration.

In 2004, the Florida FWC and the Recovery Team made the decision to postpone additional releases in the Florida nonmigratory flock. Between 1993 and 2004, program members released 289 captive-reared birds in an attempt to establish a Florida

nonmigratory flock. Problems with survival and reproduction, both of which have been complicated by drought, were considered major challenges for this flock. The Florida FWC postponed releases to focus their resources to study these issues.

In 2005, two members of the Recovery Team met with the Louisiana Department of Wildlife and Fisheries (DWF) and the Louisiana Crane Working Group to develop a plan to investigate the feasibility of a whooping crane reintroduction in Louisiana. In February 2007, a Recovery Team meeting was held in Lafayette, Louisiana, to assess the status of whooping crane recovery efforts. This meeting included updates and recovery action recommendations for the AWBP, Florida, and EMP populations. In addition, the Recovery Team also came to Louisiana to further evaluate the interest in releasing whooping cranes in Louisiana. A preliminary assessment of the habitat for a resident nonmigratory flock and wintering habitat for a migratory flock was conducted during field visits to White Lake and Marsh Island. The Recovery Team endorsed a plan that could lead to a reintroduction of whooping cranes in Louisiana. The Recovery Team recommended that the Louisiana Cooperative Fish and Wildlife Research Unit of the U.S. Geological Survey conduct a habitat assessment and food availability study at White Lake as a potential release area for a nonmigratory population and Marsh Island as a potential wintering area for a migratory flock of whooping cranes. Additional research on sandhill crane migration patterns for cranes that winter in Louisiana was also recommended. The Recovery Team also requested the Whooping Crane Health Advisory Team prepare a report on the potential health risks if whooping cranes reintroduced into Louisiana were to mix with cranes in the AWBP.

In 2008, scientists from Florida FWC and major project partners conducted a workshop to assess the current status and potential for success of establishing the resident nonmigratory population of whooping cranes in Florida. The Recovery Team used the workshop findings and other considerations, and in 2009 recommended there be no further releases into the Florida flock. The water regimes produced by periodic droughts in Florida make it extremely unlikely that reproduction in wild-hatched Florida whooping cranes will ever achieve production rates adequate for success. The Florida FWC continues to study and monitor the remaining nonmigratory whooping cranes to gather information that may prove valuable for future recovery efforts.

Nesting failure is currently the foremost concern with the EMP. WCEP's nest monitoring efforts and additional studies in 2009 and 2010 have provided compelling but inconclusive evidence of the presence of biting insects at the nests as a contributing factor to nest abandonment.

In August of 2009, the Service met with the Louisiana DWF to discuss establishing a possible resident nonmigratory population of whooping cranes in Louisiana. In April 2010, the U.S. representatives of the Recovery Team met with Louisiana DWF at the White Lake Wetlands Conservation Area (WLWCA) to discuss the proposed reintroduction in southwestern Louisiana. This meeting included an aerial overflight of southwestern Louisiana and an airboat tour of the potential crane habitat and release area at the WLWCA. In a June 17, 2010, letter to the Louisiana DWF, the Recovery Team endorsed a reintroduction of nonmigratory whooping cranes into their historic range at White Lake, Louisiana.

*Objectives of the Reintroduction*

The objectives of this reintroduction into Louisiana are to: (1) Advance recovery of the endangered whooping crane; (2) implement a primary recovery action for the whooping crane; (3) further assess the suitability of southwestern Louisiana as whooping crane habitat; and (4) evaluate the suitability of releasing captive and parent-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. Information on survival of released birds, movements, behavior, causes of losses, reproductive success, and other data will be gathered throughout the project. This reintroduction project's progress will be evaluated annually.

The likelihood of the releases resulting in a self-sustaining population is believed to be good. Whooping cranes historically occurred in Louisiana in both a resident nonmigratory flock and a migratory flock that wintered in Louisiana. The White Lake area is the location where whooping cranes were historically documented raising young in Louisiana (Gomez 1992, p. 20). The minimum goal for numbers of cranes to be released annually is based on the research of Griffith *et al.* (1989, pp. 477–480). If results of this initial planned release are favorable, releases will be continued with the goal of releasing up to 30 whooping cranes annually for about 10 years. For a long-lived species like the whooping crane, continuing releases for a number of years increases the likelihood of reaching a population level that can persist under fluctuating environmental conditions. The rearing and release techniques to be used have proven successful in releasing whooping cranes into Florida and supplementing the wild population of the endangered Mississippi sandhill crane (*Grus canadensis pulla*).

We may select additional release sites later during the efforts to reintroduce nonmigratory whooping cranes to Louisiana to reduce the risk of catastrophic loss of the population. Additional release sites could also increase the potential breeding range in Louisiana. Multiple release areas may increase the opportunity for successful pairing, because females tend to disperse from their natal site when searching for a mate. Males, however, have a stronger homing tendency toward establishing their nesting territory near the natal area (Drewien *et al.* 1983, p. 9). When captive-reared birds are released at a wild location, the birds may view the release site as a natal area. If they do, females would likely disperse away from the release area in their search for a mate. Therefore, it may be advantageous to have several release sites to provide a broader distribution of territorial males. As a result, it is possible that we will pursue future releases at additional sites. These additional sites would be selected based on the observed dispersal patterns of birds from the initial releases.

The Louisiana DWF discussed this proposed experimental population with the Mississippi Flyway Council. The Service discussed this proposed experimental population with the Central Flyway Council. During that discussion, the Texas Parks and Wildlife Department representative expressed interest in having counties in Texas included as part of the area for this proposed nonessential experimental population, in order to avoid possible closures of waterfowl hunting if whooping cranes from the proposed experimental population were to wander into the area. However, this regulation does not include any Texas counties because the Service believes that the winter range expansion of the endangered AWBP along the Texas Gulf Coast is an essential aspect of achieving recovery of the species and that it would be a rare event for a Louisiana nonmigratory whooping crane to disperse into east Texas. The Service and Louisiana DWF coordinated with the Mississippi, Central, and Atlantic Flyway Councils and adjacent State wildlife agencies by sending them the

proposed rule during the public comment period and by contacting the Texas Parks and Wildlife Department to obtain additional input on the potential reintroduction of a nonmigratory whooping crane population in southwestern Louisiana. The Louisiana DWF also made presentations and facilitated discussions with numerous organizations and potentially affected interest groups and government representatives in southwestern Louisiana.

In addition, Louisiana DWF and the Service coordinated, both formally and informally, with constituents related to the nonmigratory NEP. All were asked to provide comments on this proposed rule.

An extensive sharing of information about the effort to reintroduce a nonmigratory flock to Louisiana and the species itself, via educational efforts targeted toward the public throughout the NEP area, will enhance public awareness of this species and its reintroduction. We will encourage the public to cooperate with the Service and Louisiana DWF in attempts to maintain and protect whooping cranes in the release area.

*Reintroduction Protocol*

We will conduct an initial gentle-release of juvenile whooping cranes in the WLWCA in Vermilion Parish, Louisiana. These birds will be captive or parent-reared at one of the captive-rearing facilities, then transferred to facilities at the Louisiana release site and conditioned for wild release to increase post-release survival (Zwank and Wilson 1987, p. 166; Ellis *et al.* 1992b, p. 147; Nesbitt *et al.* 2001, p. 62) and adaptability to wild foods. Before release, the cranes will be banded for identification purposes. At the time of release, they will be tagged with radio and/or GPS solar-powered satellite transmitters at release, so that they can be monitored to discern movements, habitat use, other behavior, and survival rate. Numbers of birds available for release will depend on production at captive-propagation facilities and the future need for additional releases into the EMP. The Species Survival Center in New Orleans has received Federal funding to construct additional whooping crane breeding pens so that additional whooping crane eggs produced for release can come from Louisiana.

Captive-reared cranes are conditioned for wild release by being reared in isolation from humans, by use of conspecific role models (puppets), and by exercising with animal care personnel in crane costumes to avoid imprinting on humans (Horwich 1989, pp. 380–384; Ellis *et al.* 1992a, pp. 137–138; Urbanek and Bookhout 1992, pp. 122–123). This technique has been used to establish a population of nonmigratory whooping cranes in Florida (Nesbitt *et al.* 2001, pp. 62–63). This technique has also been successful in supplementing the population of endangered nonmigratory Mississippi sandhill cranes in Mississippi (Zwank and Wilson 1987, p. 165; Ellis *et al.* 1992b, p. 147). Facilities for captive maintenance of the birds will be modeled after facilities at the Patuxent Wildlife Research Center and the International Crane Foundation and will conform to standards set forth in the Animal Welfare Act regulations (9 CFR) and Louisiana Wildlife Code. To further ensure the well-being of birds in captivity and their suitability for release to the wild, facilities will incorporate features of their natural environment (*e.g.,* feeding, loafing, and roosting habitat) to the extent possible. The gentle release-conditioning pens will be similar to those used successfully to release whooping cranes in the Florida and EMP populations, as well as release of Mississippi sandhill cranes. Pens help young, naive birds acclimate to their surroundings, provide a degree of protection against predation, and facilitate supplementing food resources if needed. Pre-release conditioning will occur at facilities near the release site.

Since migration is a learned rather than an innate behavior, captive-reared whooping cranes released in Louisiana will likely adhere to their release area rather than disperse into new regions. There have been 289 whooping cranes released and 11 fledged in Florida between 1993 and 2010, with a current population of 21. Sixteen Florida nonmigratory whooping cranes have been documented in five States other than Florida; seven returned to the reintroduction area within 7 months, and nine were not seen again (Folk *et al.* 2008, pp. 7–12). These dispersals generally occurred in spring and summer during times of severe drought.

*Reintroduced Population*

In 2001, we designated the State of Louisiana as part of the Eastern Migratory Population NEP geographic area where whooping cranes within the NEP boundary are nonessential experimental. With this regulation, we clarify that the reintroduced nonmigratory flock of whooping cranes in southwestern Louisiana are also considered a NEP according to the provisions of section 10(j) of the ESA. This designation is justified, because no adverse effects to extant wild or captive whooping crane populations will result from release of progeny from the captive flock. We also have a reasonable expectation that the reintroduction effort into Louisiana will result in the successful establishment of a self-sustaining, resident, nonmigratory flock, which will contribute to the recovery of the species. The special rule is expected to ensure that this reintroduction is compatible with current or planned human activities in the release area.

We have concluded that this experimental population of nonmigratory birds is not essential to the continued existence of the whooping crane for the following reasons:

(a) The AWBP and the captive populations currently are the primary species populations. With approximately 150 birds in captivity at 12 discrete sites (5 main facilities and 7 other locations), and approximately 250 birds in the AWBP, the experimental population is not essential to the continued existence of the species. The species has been protected against the threat of extinction from a single catastrophic event by gradual recovery of the AWBP and by an increase in the numbers and management of the cranes at the captive sites.

(b) The primary repository of genetic diversity for the species is the approximately 400 wild and captive whooping cranes mentioned in (a) above. The birds selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

(c) Any birds lost during the reintroduction attempt can be replaced through captive breeding. This illustrates the potential of the captive flock to replace individual birds that are released in reintroduction efforts. Levels of production are expected to be sufficient to support both this reintroduction and continued releases into the EMP. Production from the extant captive flock, with approximately 30 juveniles available annually, is already large enough to support wild releases.

The hazards and uncertainties of the reintroduction experiment are substantial, but a decision not to attempt to utilize the existing captive-breeding potential to establish an additional, wild, self-sustaining population would be equally hazardous to survival of the species in the wild. The AWBP could be lost as the result of a catastrophic event or a contaminant

spill on the wintering grounds; such a loss would necessitate management efforts to establish an additional wild population. The recovery plan identifies the need for three self-sustaining wild populations—consisting of 40 nesting pairs in the AWBP and 2 additional, separate and self-sustaining populations consisting of 25 nesting pairs each—to be in existence before the whooping crane can be considered for reclassification to threatened status.

Due to the survival and reproductive issues faced by the Florida Nonmigratory Population, it is extremely unlikely that reproduction in wild-hatched Florida whooping cranes will ever achieve production rates adequate for success. If reproductive issues can be overcome, the EMP has the potential to become the second self-sustaining wild population needed to move toward recovery. Establishing a Louisiana nonmigratory flock as the third population has become a recovery priority. Whooping cranes historically occurred in Louisiana in both a resident nonmigratory flock and a migratory flock that wintered in Louisiana. The release area, White Lake, is the location where whooping cranes were historically documented raising young in Louisiana (Gomez 1992, p. 20). If this reintroduction effort is successful, conservation of the species will have been furthered considerably by establishing another self-sustaining population in currently unoccupied habitat. Because establishment of other populations has not yet been entirely successful, establishing a Louisiana nonmigratory flock will also demonstrate that captive-reared cranes can be used to establish a nonmigratory wild population.

*Location of Reintroduced Population*

Release Area

The release site, WLWCA, encompasses part of the area historically occupied by a nonmigratory breeding population of whooping cranes (Allen 1952, p. 30; Gomez 1992, p. 19). The WLWCA (formerly known as the Standolind Tract), located in Vermilion Parish, was owned and managed by BP America Production White Lake (BPWL) until 2002, when BPWL donated the property to the State of Louisiana. At that time a cooperative Endeavor Agreement between the State of Louisiana and White Lake Preservation Inc., was executed for management of the property. In 2005, according to the terms of that agreement, the Louisiana DWF received total control for management of this area. BP retained the mineral rights to WLWCA.

The WLWCA is located within the Mermentau Basin, along the north shore of White Lake, in southwestern Louisiana. Natural drainage within the basin has been interrupted by manmade features. The major source of hydrological change in this basin has been the conversion of two estuarine lakes (Grand and White Lakes) into freshwater reservoirs for agricultural (rice) irrigation in the surrounding areas. There are several large areas of public ownership in the general vicinity. The WLWCA is located approximately 11 km (7 mi) north of the State-owned Rockefeller Wildlife Refuge and Game Preserve (30,773 hectares (76,042 acres)) and approximately 32 km (20 mi) east of Cameron Prairie NWR (3,893 ha (9,621 ac)). The area north of WLWCA is primarily used for agriculture, although it was historically the panicum (paille fine) freshwater marshes that Allen (1952, p. 30) reported as being used by whooping cranes. Nonagricultural areas surrounding WLWCA consist of brackish to intermediate marshes, privately owned and primarily used for waterfowl hunting.

WLWCA comprises approximately 28,722 contiguous ha (70,970 ac) and is divided into several management units. Approximately 7,690 ha (19,000 ac) are in agricultural use, primarily in the northeastern portion (Management Units A and F), and the rest of the area is wetlands. The wetland portions are nearly bisected by Florence Canal (Gomez 1992, p. 21). Approximately 12,100 ha (29,900 ac) east of Florence Canal (Management Unit B) consist of maidencane (*Panicum hemitomon*) marsh, and water levels are passively managed. The wetland areas west of Florence Canal (Management Units E and C) were formerly a sawgrass (*Cladium jamaicense*) marsh (until a die-off in the late 1950s) and now consist of bulltongue (*Sagittaria sp.*) (Gomez 1992, p. 21). Water levels are actively managed using pumps on approximately 1,944 ha (4,805 ac) (Unit C).

The release site (Unit C—inadvertently labeled as "Unit E" in the proposed rule) consists of approximately 1,944 ha (4,805 ac) of wetlands on which the Louisiana DWF actively manages water level using pumps and weirs. Water level management consists of providing habitat for wintering waterfowl and other migratory bird species by gradual flooding in the fall, with the deepest water (0.61 to 0.76 m (2 to 2.5 ft)) generally occurring at the western end. The area is kept flooded for approximately 6 weeks and then drawn down in the spring. Louisiana DWF will manage this unit to benefit both waterfowl and whooping cranes. Louisiana DWF has also recently received a grant for a habitat restoration project for a 900-ac area adjacent to Unit C; the area will be managed specifically for whooping cranes. Boat traffic occurs in the Florence Canal (the eastern border of this unit). Limited controlled waterfowl hunting occurs on the WLWCA. Occasional controlled nonconsumptive activities (*e.g.,* boating) periodically occur within Unit C in the spring and summer. The Louisiana DWF has facilities adjacent to WLWCA where monitoring personnel would be housed.

Section 10(j) of the ESA requires that an experimental population be geographically separate from other populations of the same species. The NEP area already identified in the eastern United States for the EMP (66 FR 33903) includes Louisiana. The NEP area for the nonmigratory whooping cranes released in this reintroduction project is the State of Louisiana. The expectation is that most whooping cranes will be concentrated within wetlands at and nearby the proposed release site in Vermilion Parish. Long-term dispersal within the Louisiana nonmigratory NEP area may include areas in Acadia, Calcasieu, Cameron, Jefferson Davis, and Lafayette Parishes. The fresh water marshes and wetlands of southwestern Louisiana are expected to receive occasional use by the cranes and may be used in the event of future population expansion. However, any whooping crane found within Louisiana will be considered part of the nonessential experimental population. Although experience has shown that most birds show an affinity to the release area after gentle release, it is impossible to predict where individual whooping cranes may disperse following release within the project area. A vast majority of the whooping cranes released within Florida stayed within the NEP. Since 1993, of the 300 individuals that have been released or fledged in the wild in the Florida nonmigratory population, 16 have been documented outside of Florida; 7 returned to the reintroduction area within 7 months, and 9 were not seen again. One pair is known to have traveled to Illinois and Michigan during the severe drought of 2000 and a second pair dispersed to Virginia, but surviving members of the pairs returned to the core reintroduction area in Florida. These dispersals generally occurred during the spring and summer, during times of severe drought. Designation of the Louisiana nonmigratory NEP allows

for the possible occurrence of cranes in a larger area of Louisiana.

Released whooping cranes might wander into the eastern counties of Texas adjacent to the expected dispersal area and outside the Louisiana NEP area. We believe the frequency of such movements is likely to be very low. Any whooping cranes that leave the Louisiana NEP area but remain in the eastern United States NEP will still be considered as experimental nonessential. Any whooping crane that leaves the Louisiana and eastern United States NEP areas will be considered endangered. In the rare event of a whooping crane moving outside the Louisiana and EMP NEP areas, including those that move into eastern Texas, attempts will be made to capture and return them to the appropriate area if removal is requested by the State which they enter or if a reasonable possibility exists for contact with the AWBP.

Birds from the AWBP flock have never been observed in Louisiana, and have rarely been observed in any of the States within the eastern United States NEP area, except as a result of an extreme weather event. They are not expected to be found in the Louisiana NEP. Prior to adoption of this rule, any whooping cranes from the AWBP flock that crossed into Louisiana would have been considered part of the EMP NEP and would have been subject to a reduced level of protection. Since no AWBP birds have been shown to move into Louisiana, we have not found this to have an adverse impact on the natural wild flock. Any whooping cranes that occur within the LA NEP area will be considered part of the NEP, and will be subject to the protective measures in place for the NEP. We have not found this situation to have an adverse impact to the AWBP.

Whooping cranes released in southwestern Louisiana are not expected to interact with the AWBP flock along the Texas coast, as Aransas NWR is approximately 482 km (285 miles) southwest of the release area. However, if the Recovery Team considers having EMP whooping cranes winter in Louisiana, some interaction between EMP migratory and Louisiana nonmigratory cranes would be expected to occur. The possibility that individual birds from either flock would acquire either migratory or nonmigratory behavior through association, especially if pairs form between members of the different populations, is not likely. Research with sandhill cranes in Florida has shown that migratory and nonmigratory populations mix during winter and yet maintain their own migratory and nonmigratory behaviors. The same holds true for whooping cranes. Individuals of the Florida nonmigratory population and the EMP have associated during the winter; however, the two flocks have remained discrete and each represents a separate population as specified in the Recovery Plan (Canadian Wildlife Service and USFWS 2007, p. xii). As such, while the levels of protection are the same, the two populations may be managed differently.

Management

a. Monitoring

Whooping cranes will be intensively monitored by Louisiana DWF and other personnel prior to and after release. The birds will be observed daily while they are in the gentle-release/conditioning pen.

To ensure that we know the localities of the released birds, each crane will be equipped with a legband-mounted radio transmitter and/or a solar-powered GPS satellite transmitter. Subsequent to being gentle released, the birds will be monitored regularly to assess movements and dispersal from the area of the release pen. Whooping cranes will be checked regularly for mortality or indications of disease (listlessness, social exclusion, flightlessness, or obvious weakness). Social behavior (*e.g.,* pair formation, dominance, cohort loyalty) and habitat use will also be evaluated.

A voucher blood serum sample will be taken for each crane prior to its arrival in Louisiana. A second sample will be taken just prior to release. Any time a bird is handled after release into the wild (*e.g.,* when recaptured to replace transmitters), samples may be taken to monitor disease exposure, contaminant exposure, and physiological condition. One year after release, if possible, all surviving whooping cranes may be captured and an evaluation made of their exposure to disease/parasites/contaminants through blood, fecal, and other sampling regimens. If preliminary results are favorable, the releases will be continued annually, with the goal of releasing up to 30 birds per year for about 10 years and then evaluating the success of the recovery effort.

b. Disease/Parasite Considerations

A possible disease concern has been the probable presence of Infectious Bursal Disease (IBD) in the Central Flyway. Progress has been made on determining whether IBD is likely to affect whooping cranes. An IBD-like virus was isolated from an AWBP juvenile whooping crane that died at Aransas in February 2009. The U.S. Geological Survey's National Wildlife Health Center is studying this virus to classify it more precisely. Blood samples from sandhill cranes collected on the Platte River, Nebraska, in March 2009 found that 12 of 19 had antibodies to IBD. It appears that sandhill cranes and whooping cranes have been exposed to IBD in the Central Flyway, and that whooping cranes are likely not seriously affected by IBD. Thus, it is unlikely that the reintroduction of whooping cranes into Louisiana poses any significant risk to the AWBP whooping cranes in regard to transfer of IBD.

Both sandhill and whooping cranes are also known to be vulnerable, in part or all of their natural range, to avian herpes (inclusion body disease), avian cholera, acute and chronic mycotoxicosis, eastern equine encephalitis (EEE), and avian tuberculosis. Additionally, *Eimeria* spp., *Haemoproteus* spp., *Leucocytozoon* spp., avian pox, and *Hexamita* spp. have been identified as debilitating or lethal factors in wild or pre-release captive populations.

A group of crane veterinarians and disease specialists have developed protocols for pre-release and pre-transfer health screening for birds selected for release to prevent introduction of diseases and parasites. Exposure to disease and parasites will be evaluated through blood, serum, and fecal analysis of any individual crane handled post-release or at the regular monitoring interval. Remedial action will be taken to return to good health any sick individuals taken into captivity. Sick birds will be held in special facilities and their health and treatment monitored by veterinarians. Special attention will be given to EEE, because an outbreak at the Patuxent Wildlife Research Center in 1984 killed 7 of 39 whooping cranes present there. After the outbreak, the equine EEE vaccine has been used on captive cranes. In 1989, EEE was documented in sentinel bobwhite quail and sandhill cranes at the Patuxent Wildlife Research Center. No whooping cranes became ill, and it appears the vaccine may provide protection. EEE is present in Louisiana, so the released birds may be vaccinated. Other encephalitis diseases have not been documented as occurring or causing morbidity or mortality in cranes.

When appropriate, other avian species may be used to assess the prevalence of certain disease factors. This could mean using sentinel turkeys for ascertaining exposure probability to encephalitis or

evaluating a species with similar food habits for susceptibility to chronic mycotoxicosis.

c. Genetic Considerations

The ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that possess the maximum level of genetic diversity available from the captive population. The Service will continue to use genetic information and advances in conservation biology to effectively manage flock genetics. The Service and Louisiana DWF will adopt and implement a genetics management plan for the LA NEP. Ensuring balanced sex ratios and genetics will assist the Louisiana Nonmigratory Population in getting an early start on success. To the extent practicable, the plan will also take into account the release histories of the different lineages and their success as wild whooping cranes.

d. Mortality

Although efforts will be made to minimize mortality, some will inevitably occur as captive-reared birds adapt to the wild. Potential predators of adult and young whooping cranes include bobcats, coyotes, bald eagles, and alligators. Red fox, owls, and raccoons are also potential predators of young cranes. Collisions with power lines and fences are known hazards to wild whooping cranes. If whooping cranes begin regular use of areas traversed by power lines or fences, the Service and Louisiana DWF will consider placing markers on the obstacles to reduce the probability of collisions.

Recently released whooping cranes will need protection from natural sources of mortality (predators, disease, and inadequate foods) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, gentle release, supplemental feeding for a post-release period, vaccination, and predator control. Predator control conditioning will include teaching young cranes the habit of roosting in standing water. Predation by bobcats has been a significant source of mortality in the Eastern Migratory and Florida nonmigratory flocks, and teaching appropriate roosting behavior to young birds will help to reduce losses to coyotes and bobcats. We will minimize human-caused mortality through a number of measures such as: (a) Placing whooping cranes in an area with low human population density and relatively low development; (b) working with and educating landowners, land managers, developers, and recreationalists to develop means for conducting their existing and planned activities in a manner that is compatible with whooping crane recovery; and (c) conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to the cranes. As mentioned above in "Monitoring," the whooping cranes will be closely monitored as the reintroduction effort progresses. We will work closely with Louisiana DWF and local landowners in monitoring and evaluating the reintroduction effort and in adaptively managing any human-caused mortality issues that arise.

e. Special Handling

Service employees, Louisiana DWF employees, and their agents are authorized to relocate whooping cranes to avoid conflict with human activities; relocate whooping cranes that have moved outside the appropriate release area or the NEP area when removal is necessary or requested; relocate whooping cranes within the NEP area to improve survival and recovery prospects; and aid cranes that are sick, injured, or otherwise in need of special care. If a whooping crane is determined to be unfit to remain in the wild, it will be returned to captivity. Service employees, Louisiana DWF, and their agents are authorized to salvage dead whooping cranes.

f. Potential Conflicts

In the central and western United States, conflicts have resulted from the hunting of migratory birds in areas utilized by whooping cranes, particularly the hunting of sandhill cranes and snow geese (*Chen cerulescens*), because novice hunters may have difficulty distinguishing whooping cranes from those species. During the past 10 years, three crane mortalities have been documented incidental to hunting activities. In Louisiana, snow geese are hunted; however, sandhill cranes are not. Accidental shooting of a whooping crane in this experimental population occurring in the course of otherwise lawful hunting activity is exempt from take restrictions under the ESA in this special regulation. Applicable Federal penalties under the Migratory Bird Treaty Act and/or State penalties, however, may still apply. There will be no Federally mandated hunting area or season closures or season modifications for the purpose of protecting whooping cranes in the nonmigratory flock. We will minimize mortality due to accidental shootings by providing educational opportunities and information to hunters to assist them in distinguishing whooping cranes from other legal game species.

The bulk of traditional hunting in the WLWCA release area has been for waterfowl and migratory bird species, turkey (*Meleagris gallopavo*), deer (*Odocoileus virginianus*), and small game. Conflict with traditional hunting in the release area is not anticipated. Access to some limited areas at release sites and at times when whooping cranes might be particularly vulnerable to human disturbance (*i.e.,* at occupied nesting areas) may be temporarily restricted. Any temporary restricted access to areas for these purposes will be of the minimum size and duration necessary for protection of the NEP cranes, and will be closely coordinated with the Service and at the discretion of Louisiana DWF. Any such access restrictions will not require Federal closure of hunting areas or seasons.

The Louisiana DWF will maintain its management authorities regarding the whooping crane. It is not directed by this rule to take any specific actions to provide any special protective measures, nor is it prevented from imposing restrictions under State law, such as protective designations, and area closures. Louisiana DWF has indicated that it would not propose hunting restrictions or closures related to game species because of the whooping crane reintroduction.

Overall, the presence of whooping cranes is not expected to result in constraints on hunting of wildlife or to affect economic gain landowners might receive from hunting leases. The potential exists for future hunting seasons to be established for other migratory birds that are not currently hunted in Louisiana. This action will not prevent the establishment of future hunting seasons approved for other migratory bird species by the Central and Mississippi Flyway Councils.

The principal activities on private property adjacent to the release area are agriculture, aquaculture, oil and gas exploration and extraction, water level management as part of coastal restoration projects, and recreation. Use of these private properties by whooping cranes will not preclude such uses.

Offshore oil exploration and extraction activities, as well as the Deepwater Horizon/MC252 Oil Spill and cleanup, have not affected the release area. The release area is in a fresh to brackish marsh system. The WLWCA is also located over 200 miles from the Deepwater Horizon oil spill release site and 17 miles north of the Gulf of Mexico shoreline. Additionally, there are multiple physical barriers to stop crude oil from entering WLWCA,

such as the Gulf of Mexico beach rim, levees, water control structures, locks, and spill control equipment. The nearest location that was affected by the spill was Marsh Island, which is 45 miles (72 km) away. The special regulation accompanying this rule only authorizes take of the whooping crane in the NEP area when the take is accidental and incidental to an otherwise lawful activity. Inland oil and gas exploration and extraction activities associated with mineral rights will continue to be managed by existing Federal and State environmental rules and regulations. As described earlier, migration is a learned behavior in whooping cranes, and we do not anticipate that released birds will disperse to areas close to the coastline. We will be monitoring the locations of the birds via transmitter to ensure the health and safety of each individual.

An additional issue identified as a possible conflict is the potential for crop depredation. There is evidence that some sandhill cranes have caused losses of emerging corn in Wisconsin (Blackwell *et al.,* 2001, p. 67) and Florida. It is possible that whooping cranes could engage in this type of behavior on planted crops in Louisiana as well. However, whooping cranes are socially less gregarious than sandhill cranes, and tend to restrict the bulk of their foraging activities to wetland areas. Therefore, they are believed to be less likely to cause significant crop depredations.

Whooping cranes are known to use ranchlands and pasture, but with no known impacts to cattle operation practices. Among the primary sandhill and whooping crane habitats in Florida are ranchlands and pastures associated with cattle operations (Nesbitt and Williams, 1990, p. 95). AWBP whooping cranes are also known to utilize the cattle ranchlands adjacent to Aransas National Wildlife Refuge as wintering habitat (Canadian Wildlife Service and USFWS 2007, p. 14). We do not anticipate that the presence of whooping cranes on ranchlands or pastures in Louisiana would cause any impacts to cattle operations.

Like other wading bird species, whooping cranes will forage along lake and pond edges, and may forage along the edges of ponds used for crawfish production, but this is not likely to cause significant stock depredations on crawfish. However, water levels of crawfish ponds are lowered at certain times for management purposes. Lowering of water depths, called drawdowns, do attract large numbers of wading birds as aquatic organisms become concentrated and vulnerable to depredation during the lower water depths. If such depredations occur due to whooping cranes, they can be minimized through use of bird-scaring devices and other techniques. Therefore, we do not expect that whooping cranes will pose a significant threat of stock depredation to crawfish. Another concern is that whooping cranes may choose to nest in an area with an ongoing crawfish operation. If whooping cranes nest in such a situation, it would indicate that those birds have acclimated to those activities and it is anticipated that the activities would not likely impact a nesting attempt.

If whooping cranes use national wildlife refuges in Louisiana, the management programs on the refuges will continue as identified in the individual refuges' approved comprehensive conservation plans, step-down management plans, and annual work plans, and via customary and traditional accouterments. Activities of existing mineral rights owners, which include exploration, mining, marketing, and production, will continue to be managed by the Service in accordance with existing refuge special-use permit conditions currently used for the protection of migratory birds. All other mineral operations will further be managed in accordance with approved Comprehensive Conservation Plans.

Under the existing rules currently in place for the protection of all fish and wildlife, including the numerous wading birds and other migratory birds in the Louisiana coastal zone, mineral exploration and extraction activities on private and/or State-owned lands can continue without additional impacts from the presence of reintroduced birds. Whooping cranes, like other wading birds, will flush due to close proximity of helicopters or airboats. Current practices by private, State, and Federal land managers will minimize unnecessary harassment of all wildlife during such activities.

This reintroduction effort will gentle-release captive-born, isolation-reared whooping crane chicks at WLWCA in Vermilion Parish in an attempt to establish a resident nonmigratory population of whooping cranes in Louisiana. It will be difficult to predict which specific sites will be utilized by the birds, and some cranes may use habitats with which they have no previous experience. Whooping cranes that appear in undesirable locations will be considered for relocation by capture and/or hazing of the birds. Possible conflicts with hunting, recreation, agriculture, aquaculture, oil and gas exploration/extraction, and water management interests within the release area will be minimized through an extensive public education program.

**Summary of Comments and Recommendations**

In the August 19, 2010, proposed rule (75 FR 51223), we requested comments or recommendations concerning any aspect of the proposal and the accompanying draft Environmental Assessment (EA) that might contribute to development of the final decision on the proposed rule. A 60-day comment period was provided. We sent copies of the rule and other informational materials about the project to State and Federal agencies, Congressional representatives, Tribes, Flyway Councils, conservation groups, hunting groups, and numerous private citizens who may be affected or had expressed an interest in receiving further information on the project. In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we also provided copies of this proposed rule to three or more appropriate independent reviewers.

*Changes resulting from public comments:* As the result of comments received, we have changed several sections of the preamble in this final rule to update information, add new information, and clarify important points. However, we are not making any changes to the text for 50 CFR 17.84(h) from what we had published in our proposed rule of August 19, 2010 (75 FR 51223).

We held two public hearings to receive comments on the proposed rule. One hearing was held at the Gueydan Community Center, Gueydan, Vermilion Parish, Louisiana, the largest community (population 1,591) nearest to the proposed release site. The second hearing was held at the Louisiana Department of Wildlife and Fisheries Headquarters in Baton Rouge, Louisiana. We received 19 comments on the proposed rule at the public hearings and 19 written comments on the proposed rule and/or the draft EA. We also received 23,210 electronic mail form letters from the membership of a conservation organization; 9 of those responses included additional personal comments. Overall, comments came from individuals, conservation organizations, a hunting/conservation organization, a private corporation, and a State wildlife agency. Peer review included a State agency avian biologist and two independent avian experts. No comments expressed direct opposition to the proposal. Comments included support for the proposal to designate a nonessential experimental population;

support with concerns; support with concerns and recommendations; and indirect opposition with recommendations for delay due to perceived Deepwater Horizon/MC252 oil spill effects. Analysis of the comments revealed 12 issues that are identified and discussed below. These 12 issues also covered the personal comments found in 9 of the 23,210 form letters.

*Issue 1:* Two commenters indirectly opposed releases and recommended delay, and many others expressed concern, regarding the negative impacts that the Deepwater Horizon/MC252 oil spill may have had on coastal Louisiana and the WLWCA, and potential impacts to whooping cranes released into southwestern Louisiana.

*Our Response:* The Deepwater Horizon/MC252 Oil Spill has not had a direct effect on the release site, WLWCA, or the surrounding habitats in southwestern Louisiana. The release area is inland, and is buffered from the coast by more than 15 miles (24 km) of the Chenier plain, as well as ridges and coastal marshes. Two small segments of shoreline approximately 30 to 45 miles (48 to 72 km) to the southeast experienced light oiling (on Marsh Island and on adjacent western shore) during the oil spill. As of November 5, the nearest coastal areas with residual oiling are located on the eastern edge of Atchafalaya Bay in St. Mary and Terrebonne Parishes, approximately 78 miles (125 km) or farther away from the WLWCA. Therefore, the Service has determined that the Deepwater Horizon/MC252 Oil Spill will likely have no effects on the whooping cranes reintroduced into southwestern Louisiana. For monitoring purposes, released birds will be fitted with tracking devices as to determine their locations. If we determine that birds enter sites or situations that would be harmful to them, we will work to relocate the bird out of harm's way. We also will be monitoring the health of birds through a variety of methods (blood samples, observation, retrieval and necropsy of any dead birds, *etc.*) so that we will be able to detect any unexpected effects on the health of the birds. We will be monitoring habitat suitability and prey availability as well.

*Issue 2:* The Service should pursue the reintroduction of a migratory population of whooping cranes that winters at Marsh Island and should also consider using Marsh Island and other refuges in southwestern Louisiana as a release site for the nonmigratory population.

*Our Response:* The current proposal for reintroduction in southwestern Louisiana reflects the most recent recommendation of the Recovery Team (June 17, 2010, letter from the Service to Louisiana DWF). This recommendation was reached after careful consideration of all factors likely to influence the reestablishment of another self-sustaining flock of whooping cranes needed to contribute toward recovery of the species. Some of these factors are discussed within the "Background" section in this rule. Factors supporting the WLWCA include the presence of suitable breeding habitat and food resources, over 405,000 hectares (1 million acres) of wetlands in the area, many large tracts of publicly managed lands in the area, geographic separation from the existing natural wild flock, support from the public, and the State of Louisiana's willingness to take on the leadership role and desire to restore a piece of the natural heritage of Louisiana.

Some aspects of a reintroduction of a migratory population that would winter at Marsh Island hold promise, and the area will remain under consideration for a future reintroduction when conditions are more favorable for the effort. These aspects are outlined in the EA along with the issues that will need to be addressed before such a reintroduction can be pursued. Marsh Island has many of the characteristics that would make for a good release area: A large area of pristine estuarine habitat, little to no pressure from humans, and no bobcats or coyotes. However, Marsh Island lacks the most important habitat characteristic needed for a nonmigratory population of whooping cranes, namely large areas of freshwater marshes that will support nesting whooping cranes. To date, whooping cranes are known only to nest in freshwater marshes. In the Objectives of the Reintroduction section of the rule, we specifically indicate that to facilitate a successful reintroduction, other release sites may be considered in southwestern Louisiana.

*Issue 3:* One commenter expressed concern regarding the genetics of the whooping cranes to be released into Louisiana. Specifically, genetic lineages that are more successful in captivity might well have traits that will make them less successful in the wild.

*Our Response:* As stated in the 2007 Whooping Crane Recovery Plan, the Service will continue to use genetic information and advances in conservation biology to effectively manage flock genetics in accordance with the whooping crane recovery plan. As the commenter has recommended, the Service and Louisiana DWF will adopt and implement a genetics management plan for the LA NEP. The ultimate genetic goal of this project is to establish a wild reintroduced population that possesses the maximum level of genetic diversity available from the captive population. Ensuring balanced sex ratios and genetics will assist the population in getting an early start on success for the Louisiana Nonmigratory Population. The plan will also take into account the release histories of the different lineages and their success as wild whooping cranes.

*Issue 4:* Several commenters expressed concern about hunting and recommended hunter education.

*Our Response:* We agree that hunter education is an important component of this process. Because of the perception of government restrictions associated with endangered species, the relaxation of take prohibitions as part of the 10(j) designation of an experimental nonessential population has been very important in gaining public support for whooping crane reintroductions. A key factor of the rule gaining support from the hunting community is that accidental shooting of a whooping crane in this experimental population occurring in the course of a lawful hunting activity is exempt from take restrictions under the ESA in this special regulation. However, applicable Federal penalties under the Migratory Bird Treaty Act and/or State penalties may still apply. Further, the intentional take of a whooping crane is still subject to the full applicable penalties of the ESA.

The Service is working with Louisiana DWF to develop hunter educational materials designed to minimize the likelihood of accidental shooting of whooping cranes, develop outreach materials to assist in distinguishing whooping cranes from legal game species, and develop appropriate messages for target audiences. The Service will also assist Louisiana DWF in working with land managers and land owners of the properties used by whooping cranes and in distributing information to land managers, land owners, partners, and stakeholders to keep them informed of whooping crane presence and movements.

*Issue 5:* Commenters were also concerned about forage availability. Specifically, they were concerned whether the current water management regimes at the reintroduction site were suitable to ensure the availability of blue crab and other estuarine food prey items.

*Our Response:* The availability of blue crabs (*Callinectes sapidus*) and other estuarine prey items as forage at the WLWCA was not a factor when we

decided upon the release location. The historic nonmigratory whooping crane population was dependent upon the freshwater marshes and wet prairie. The project is targeting freshwater, as whooping cranes are known only to nest in fresh water wetlands. The Florida NonMigratory Population reintroduction targeted the freshwater wetlands and prairies of central Florida. In that flock, productivity was correlated with rainfall and wetland water levels. The Eastern Migratory Population reintroduction targeted estuarine wetlands as wintering habitat in an effort to mimic ecology of the wild AWBP (wintering in estuarine habitat at the Aransas NWR and feeding predominantly on blue crabs). However, after a decade of releasing birds into this population, virtually all of the whooping cranes depend upon freshwater wetlands, including wintering habitat. There has been very little use of Florida's coastal salt marsh as wintering habitat. Whooping cranes in the Eastern Migratory Population and Florida NonMigratory Population have had no issues with finding adequate forage in freshwater wetlands systems. Furthermore, even though White Lake has changed from the 1940s brackish/fresh system to a predominantly fresh system, the area maintains a steady population of blue crab (*Callinectes sapidus*), white shrimp (*Litopenaeus setiferus*), largemouth bass (*Micropterus salmoides*), and other aquatic species that are projected to remain steady to the year 2050 (Louisiana Coastal Wetlands Conservation and Restoration Task Force and the Wetlands Conservation Restoration Authority 1999, pp. 11–13). Other water-dependent birds with diet preferences similar to those of whooping cranes are abundant in the release area. The main point is that whooping cranes are generalists, are quite adaptive, and will utilize the food sources that are available.

*Issue 6:* Several commenters expressed concern with changes in the hydrologic management of the WLWCA and the Mermentau Basin as a fresh-water impoundment since the last resident whooping crane population was present, and questioned if the habitat would support/sustain a population of nonmigratory whooping cranes. It was also recommended that the Service and the U.S. Army Corps of Engineers update the Mermentau Basin management plan to restore the estuarine environment of White Lake.

*Our Response:* As discussed previously, the Louisiana DWF has indicated that it will develop a water management regime for the WLWCA that will benefit both waterfowl and whooping cranes. Water management in the Mermentau Basin has primarily been controlled since the early 1950s through two control structures operated by the U.S. Army Corps of Engineers. There has been a shift in habitat types from the predominately brackish-to-fresh marshes of the 1940s to the predominantly fresh marsh found today (Louisiana Coastal Wetlands Conservation and Restoration Task Force and the Wetlands Conservation restoration Authority 1999, pp. 11–13). However, as previously discussed in our response to Issue 5, we believe this habitat will support a whooping crane population. The Service is actively involved in coastal restoration and protection throughout Louisiana via our participation on the Coastal Wetlands Planning, Protection, and Restoration Act of 1990 (CWPPRA) Task Force. The CWPPRA program provides Federal grants to acquire, restore, and enhance wetlands of coastal States and was one of the first programs with Federal funds dedicated exclusively to the long-term restoration of coastal habitat (104 Stat. 4779). Two other restoration plans being implemented in coastal Louisiana are the Louisiana Coastal Area Ecosystem Restoration Plan (LCA) and Louisiana's Comprehensive Master Plan for a Sustainable Coast (State Master Plan). The LCA, administered by the U.S. Army Corps of Engineers with State cost-share assistance, focuses on the protection of coastal wetlands. In addition, Louisiana's Coastal Impact Assistance Program (CIAP) also provides funding for wetland restoration. The State Master Plan serves as Louisiana's overarching document to guide hurricane protection and coastal restoration efforts in the State. We will continue to work with the CWPPRA Task Force and the State of Louisiana to address wetland restoration in the Mermentau Basin and throughout Louisiana.

*Issue 7:* Several comments raised concern about contaminant risks, specifically mercury, and water quality issues for the release area.

*Our Response:* The Service recognizes that exposure of wildlife to mercury, agricultural chemicals, and other contaminants is a concern, not only in Louisiana, but across the entire southeastern United States. Furthermore, there are few places in the world where these contaminants are not found, because they can be transported atmospherically as well as through waterways and food chains. One of the initial, critical questions the Service examined was whether the proposed release site currently supported a healthy population of aquatic and terrestrial wildlife, especially fish-eating birds. Such bird species are at a similar risk in regard to contaminant exposure because of their level in the food chain and their longevity, both of which contribute to exposure and bioaccumulation of contaminants, and also because their life history and physiology are comparable with that of whooping cranes. Our review concluded that there were indeed an abundance and a wide diversity of terrestrial and aquatic species that have been sustained at the release site. We believe based on this review that reintroduced birds will not be threatened by contaminants; however, in an effort to reduce our uncertainty about the potential risks, ground-truth our assumptions, and adopt a contingency plan, the Service will undertake three actions. First, we will initiate a review of the available information on contaminants in watersheds, and the potential pathways into the release site. Second, we will collaborate with current efforts that are examining the forage base at the release site to obtain samples for potential chemical analysis. We will seek funding to have selected samples analyzed for contaminants of concern, which will be identified during our review of available information. We anticipate that mercury, as well as a few selected agricultural chemicals, will likely be included in that analysis. Third, all whooping cranes will be fitted with tracking transmitters, which will allow us to monitor where they forage and enable us to sample from known foraging areas. The transmitters will also enable us to determine if the cranes move to an unsafe area, at which point they would be captured and relocated, and if one should die, we would be able to recover the body and determine the cause of death. We will also be conducting periodic health checks on the population, and the health screening will include contamination assessment from blood and feathers and other samples. Health examinations and mortality events will provide additional important data for implementing adaptive management strategies if determined to be appropriate.

*Issue 8:* What are the plans to protect the whooping cranes during a hurricane?

*Our Response:* There are always risks involved with any reintroduction effort. Hurricanes are a natural event that affected the historic resident population that occurred in coastal Louisiana, and hurricanes are an anticipated and accepted risk for this reintroduction project. The frequency, intensity, and location of hurricanes are hard to

predict. Like all resident bird populations that occur in coastal Louisiana, the whooping cranes will be left to their innate instincts to survive the effects of a hurricane if one comes ashore near the release site. To the extent practicable, attempts to capture and move young naive birds may be considered. Lightning has also been identified as a cause of mortality in the Florida Nonmigratory Population. Like hurricanes, there are no management tools to reduce this type of risk to whooping cranes.

The Louisiana DWF is deploying tracking devices on the whooping cranes to monitor the health, well being, and success of the reintroduction. The whooping cranes will likely disperse during hurricanes, storm surge events, and possibly during droughts. Locating those refugia and evaluating their suitability will be important, as will identifying the overall dispersal of cranes.

*Issue 9:* One commenter asked us to address the effects of climate change on the reintroduction.

*Our Response:* Precise impacts of climate change to the coastal habitats of Louisiana are difficult to predict with any certitude. The release site is far enough from the coast that sea-level rise and associated loss of habitat are not expected to be issues for the reintroduction in the foreseeable future. Effects of climate change on environmental conditions, including levels of precipitation and hurricane intensity, are uncertain. How climate change might impact the ecosystems required by whooping cranes, including changes in plant communities, invasive species, and disease, is also hard to predict. The whooping crane reintroduction will have to use adaptive management to the extent practicable to respond to long-term changing conditions.

As climate change disrupts ecological processes, southwest Louisiana is likely to experience significant changes in its physical and biological resources. Regional Climate Science Centers are being established by the U.S. Geological Survey and the Department of the Interior (DOI) within the United States. These centers will provide scientific information, tools, and techniques needed to manage land, water, wildlife, and cultural resources in the face of climate change. The USGS and the DOI centers will also work closely with a network of Landscape Conservation Cooperatives in which Federal, State (including the State of Louisiana), Tribal, and other managers and scientists will develop conservation, adaptation, and mitigation strategies for dealing with the impacts of climate change (U.S. Geological Survey 2010) (USFWS 2009).

*Issue 10:* In order to decrease the likelihood of take, best management practices should be adopted for each of the land use activities where potential concerns or issues could arise.

*Our Response:* In the first year of the project, the Service will develop a Whooping Crane Best Management Practices (BMPs) document. This document will include a compilation of existing BMPs and Conservation Recommendations. We will also develop new BMPs as needed to address needs specific for Louisiana. As recommended, we will work toward developing BMPs for the land use activities identified in this rule (oil/gas exploration and extraction, aquaculture/agriculture/livestock practices, water management, construction, restoration, recreation, and hunting). For example, oil/gas exploration and extraction are not a new issue for whooping cranes. The Aransas NWR has active oil/gas activities on and near the refuge and we will draw from their experience on these matters. The Service will also work with Louisiana DWF to develop a Whooping Crane Conservation and Management for Landowners document to assist interested landowners and land managers in contributing to whooping crane conservation and recovery.

*Issue 11:* One commenter commented that the Service should confer with the U.S. Department of Agriculture's Wildlife Services regarding its management of coyotes, blackbirds, aquatic rodents, pigeons, starlings and sparrows in Louisiana.

*Our Response:* Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. The Service will confer with Wildlife Services to ensure that wildlife management activities will minimize negative impacts to whooping cranes in Louisiana. The Service will also confer with all other Federal agencies regarding Federal activities that may impact conservation of whooping cranes.

*Issue 12:* At the Central Flyway Council meeting and in a comment letter, the Texas Parks and Wildlife Department suggested that the proposed NEP be expanded to include 16 Texas counties. In the comment letter, Texas Parks and Wildlife Department indicated support for the approach the Service would employ if a stray whooping crane for the reintroduced nonmigratory flock moved into Texas.

*Our Response:* The Service cannot expand the NEP area to include counties in Texas that will be needed by the AWBP to reach recovery. The winter habitat and migration corridor of the AWBP, the only natural wild whooping crane population, runs north from the Central Texas coast up to the Northwest Territories in Canada. With no delisting target set, and studies indicating the AWBP whooping cranes will have to extend northward up the Texas coast to nearly Freeport to meet the criteria for reclassification to threatened status, the Service believes that the marshes along the Texas coast all the way to the Louisiana border will someday be occupied by whooping cranes if the species is ever to be numerous enough to delist. Therefore, we believe habitat along the Texas coast and in the referenced counties is important to the AWBP whooping cranes and the continued progression of their recovery.

The Service intends to use the maximum management flexibility possible to avoid and/or minimize any disruption of human activities caused by Louisiana whooping cranes that might stray into Texas, and will attempt to catch these stray birds and return them to Louisiana if they cannot be managed in a manner satisfactory to Texas. In addition, we will continue to work closely with our State agency partners in both Louisiana and Texas as explained in this rule and our special regulation.

**Required Determinations**

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

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule includes the State of Louisiana. Because NEP designation does not establish substantial new regulation of activities, we do not expect this rule to have any significant effect on recreational, agricultural, or development activities. Although the entire NEP boundary encompasses a large area, the section of the NEP area where we anticipate the establishment of an experimental population of nonmigratory whooping cranes is mainly public land owned by the State of Louisiana. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the special rule, we do not expect this rule to have significant effects on any activities within Tribal, Federal, State, or private lands within the NEP.

On national wildlife refuges and units of the National Park System within the NEP, Federal action agencies are required to consult with us, under section 7(a)(2) of the ESA, on any of their activities that may affect the whooping crane. In portions of the NEP outside of National Wildlife Refuge System and National Park Service lands, in regard to section 7(a)(2), the population is treated as proposed for listing and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. But because the NEP is, by definition, not essential to the continued existence of the species, conferring will likely never be required for the whooping crane population within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, and this requirement will apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the whooping crane, but we do not expect projects to be halted or substantially modified as a result of these regulations.

The principal activities on private property near the expected reestablishment area in the NEP are agriculture, ranching, oil and gas exploration and extraction, and recreation. The presence of whooping cranes would likely not affect the use of lands for these purposes, because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of whooping cranes. Therefore, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, oil and gas exploration or extraction, or any development activities.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule will not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. Small governments will not be affected because the NEP designation will not place additional requirements on any city, county, or other local municipality.

(2) This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a "significant regulatory action" under the Unfunded Mandates Reform Act). This NEP designation for whooping crane would not impose any additional management or protection requirements on the States or other entities.

*Takings (E.O. 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule allows for the taking of reintroduced whooping cranes when such take is incidental to an otherwise legal activity, such as recreation (*e.g.,* fishing, boating, wading, or swimming), agriculture, oil and gas exploration and extraction, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe the reintroduction of whooping cranes conflicts with existing human activities, hinders uses of private and public lands, or hinders subsurface mineral rights, such as oil and gas exploration and extraction, within the NEP area.

A takings implication assessment is not required because this rule: (1) Will not effectively compel a property owner to suffer a physical invasion of property, and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of a listed bird species), and will not present a barrier to all reasonable and expected beneficial use of private property.

*Federalism (E.O. 13132)*

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in Louisiana. Achieving the recovery goals for this species will contribute to its eventual delisting and return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected.

The special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Louisiana. We have cooperated with Louisiana DWF in the

preparation of this rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism assessment pursuant to the provisions of Executive Order 13132.

*Civil Justice Reform*

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

*Paperwork Reduction Act*

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act. OMB has approved our collection of information associated with reporting the taking of experimental populations and assigned control number 1018–0095, which expires March 31, 2011. We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have prepared an environmental assessment as defined by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* It is available from the Jacksonville Field Office (*see* **ADDRESSES**).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 229511), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on and have notified the Native American Tribes within the NEP. They have been advised through verbal and written contact, including informational mailings from the Service. If future activities resulting from this rule may affect Tribal resources, a Plan of Cooperation will be developed with the affected Tribe or Tribes.

*Energy Supply, Distribution, or Use (E.O. 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Effective Date

We find good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to make this rule effective upon publication. The prompt release of 11 currently available captive-reared young-of-the-year (9–10 months) whooping cranes is necessary because: (1) In the south, February is the natural time of the year that nonmigratory whooping cranes may begin a new reproduction effort, which results in the juveniles from the previous year to disperse. Thus, late winter is an optimum time for juvenile whooping cranes to start to become adapted to life in the wild on their own; (2) the young cranes become less suitable for wild release if they are held in captivity for too long; (3) there will be a reduced predator risk for the release cohort during the late winter because alligators are less active; and (4) the Aransas Wood Buffalo population of whooping cranes, the only remaining natural population of whooping cranes in North America, remains very endangered. In order to try to achieve recovery as expeditiously as possible, it is important to conduct reintroduction efforts as soon as possible, before a possible catastrophe might hit the Aransas Wood Buffalo flock. Moreover, we expect no conflicts to occur from the reintroduction of whooping cranes as set forth in this rule to any existing or anticipated Federal, State, Tribal, or local government or private actions, including those pertaining to agriculture, aquaculture, livestock production, oil or gas exploration and extraction, pesticide application, water management, construction, recreation, trapping, or hunting.

**References Cited**

A complete list of all references cited in this rule is available upon request from the Jacksonville Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The principal authors of this rule are Bill Brooks, of the Jacksonville, Florida, Field Office; and Deborah Fuller, of the Lafayette, Louisiana, Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the existing entry for "Crane, whooping" under "BIRDS" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | * | |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | * | |
| Crane, whooping. | *Grus americana*. | Canada, U.S.A. (Rocky Mountains east to Carolinas), Mexico. | Entire, except where listed as an experimental population. | E ..... | 1,3 ..... | 17.95(b) ..... | NA. |
| Do ..... | Do ..... | Do ..... | U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY). | XN ..... | 487, 621, 710, 785. | NA ..... | 17.84(h). |
| * | * | * | * | * | * | * | |

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■ 3. Amend § 17.84 by revising paragraph (h) to read as follows:

**§ 17.84 Special rules—vertebrates.**

* * * * *

(h) Whooping crane *(Grus americana).*

(1) The whooping crane populations identified in paragraphs (h)(9)(i) through (iv) of this section are nonessential experimental populations (NEPs) as defined in § 17.80.

(i) The only natural extant population of whooping cranes, known as the Aransas/Wood Buffalo National Park population, occurs well west of the Mississippi River. This population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge.

(ii) No natural populations of whooping cranes are likely to come into contact with the NEPs set forth in paragraphs (h)(9)(i) through (iv) of this section. Whooping cranes adhere to ancestral breeding grounds, leaving little possibility that individuals from the extant Aransas/Wood Buffalo National Park population will stray into the NEPs. Studies of whooping cranes have shown that migration is a learned rather than an innate behavior.

(2) No person may take this species in the wild in the experimental population areas, except when such take is accidental and incidental to an otherwise lawful activity, or as provided in paragraphs (h)(3) and (4) of this section. Examples of otherwise lawful activities include, but are not limited to, oil and gas exploration and extraction, aquacultural practices, agricultural practices, pesticide application, water management, construction, recreation, trapping, or hunting, when such activities are in full compliance with all applicable laws and regulations.

(3) Any person with a valid permit issued by the Fish and Wildlife Service (Service) under § 17.32 may take whooping cranes in the wild in the experimental population areas for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, and other conservation purposes consistent with the ESA and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a whooping crane in the wild in the experimental population areas if such action is necessary to:

(i) Relocate a whooping crane to avoid conflict with human activities;

(ii) Relocate a whooping crane that has moved outside any of the areas identified in paragraphs (h)(9)(i) through (iv) of this section, when removal is necessary or requested and is authorized by a valid permit under § 17.22;

(iii) Relocate whooping cranes within the experimental population areas to improve survival and recovery prospects;

(iv) Relocate whooping cranes from the experimental population areas into captivity;

(v) Aid a sick, injured, or orphaned whooping crane; or

(vi) Dispose of a dead specimen or salvage a dead specimen that may be useful for scientific study.

(5) Any taking pursuant to paragraphs (h)(3) and (4) of this section must be immediately reported to the National Whooping Crane Coordinator, U.S. Fish and Wildlife Service, P.O. Box 100, Austwell, TX 77950 (Phone: 361–286–3559), who, in conjunction with his counterpart in the Canadian Wildlife Service, will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (h)(2) through (6) of this section.

(8) The Service will not mandate any closure of areas, including National Wildlife Refuges, during hunting or conservation order seasons, or closure or modification of hunting or conservation order seasons, in the following situations:

(i) For the purpose of avoiding take of whooping cranes in the NEPs identified in paragraphs (h)(9)(i) through (iv) of this section;

(ii) If a clearly marked whooping crane from the NEPs identified in paragraphs (h)(9)(i) through (iv) of this section wanders outside the designated NEP areas. In this situation, the Service will attempt to capture the stray bird and return it to the appropriate area if removal is requested by the State.

(9) All whooping cranes found in the wild within the boundaries listed in paragraphs (h)(9)(i) through (iv) of this section will be considered nonessential experimental animals. Geographic areas the nonessential experimental populations may inhabit are within the historic range of the whooping crane in

the United States and include the following:

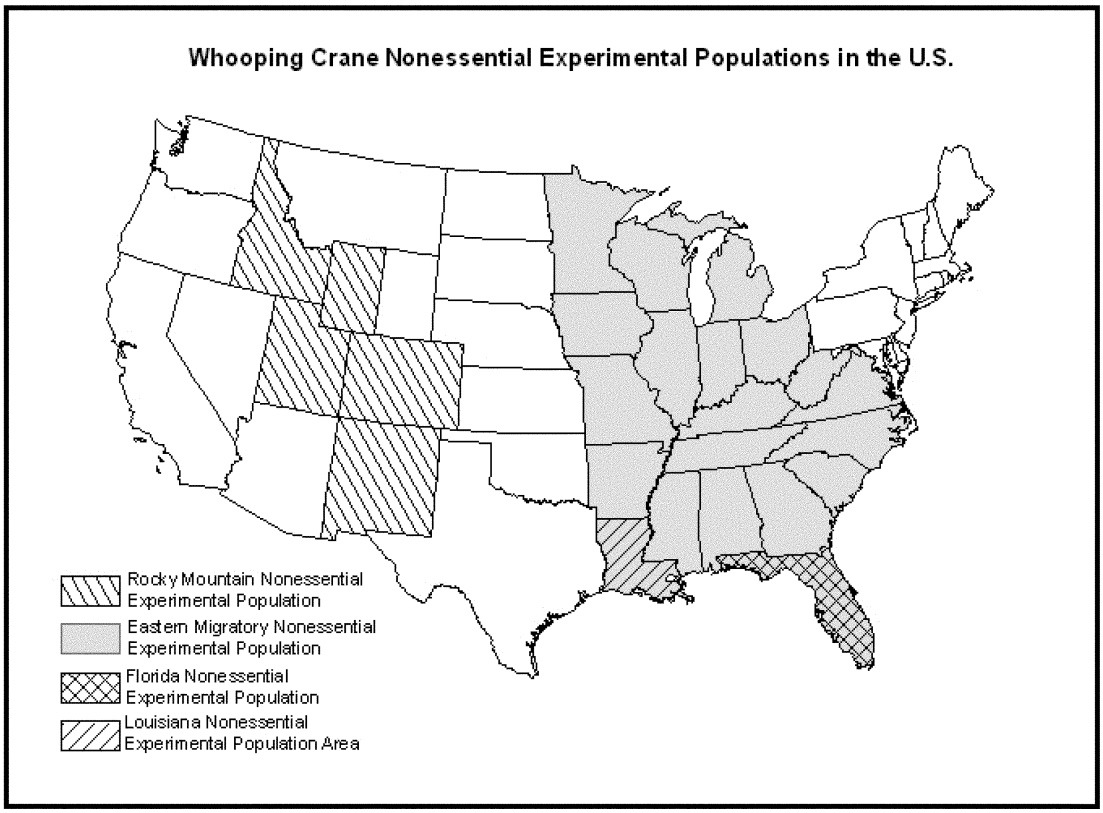
(i) The entire State of Florida (the Kissimmee Prairie NEP). The reintroduction site is the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee Counties. The experimental population released at Kissimmee Prairie is expected to remain mostly within the prairie region of central Florida.

(ii) The States of Colorado, Idaho, New Mexico, and Utah, and the western half of the State of Wyoming (the Rocky Mountain NEP).

(iii) That portion of the eastern contiguous United States that includes the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin (the Eastern Migratory NEP). Whooping cranes within this population are expected to occur mostly within the States of Wisconsin, Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida. The additional States included within the experimental population area are those expected to receive occasional use by the cranes, or which may be used as breeding or wintering areas in the event of future population expansion.

(iv) The entire State of Louisiana (the Louisiana Nonmigratory NEP). The reintroduction site is the White Lake Wetlands Conservation Area of southwestern Louisiana in Vermilion Parish. Current information indicates that White Lake is the historic location of a resident nonmigratory population of whooping cranes that bred and reared young in Louisiana. Whooping cranes within this nonmigratory population are expected to occur mostly within the White Lake Wetlands Conservation Area and the nearby wetlands in Vermilion Parish. The marshes and wetlands of southwestern Louisiana are expected to receive occasional use by the cranes and may be used in the event of future population expansion.

(v) A map of all NEP areas in the United States for whooping cranes follows:




BILLING CODE 4310–55–C

(10) The reintroduced populations will be monitored during the duration of the projects by the use of radio telemetry and other appropriate measures. Any animal that is determined to be sick, injured, or otherwise in need of special care will be recaptured to the extent possible by Service and/or State wildlife personnel or their designated agent and given appropriate care. Such animals will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive-breeding facility.

(11) The Service will reevaluate the status of the experimental populations periodically to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released within the experimental population areas.

* * * * *

Dated: January 26, 2011.

**Jane Lyder,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–2367 Filed 2–2–11; 8:45 am]

BILLING CODE 4310–55–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 0910131363–0087–02]**

**RIN 0648–XA151**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is reallocating the projected unused amounts of the Aleut Corporation's pollock directed fishing allowance and the Community Development Quota from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2011 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 3, 2011, until the effective date of the final 2011 and 2012 harvest specifications for Bering Sea and Aleutian Islands (BSAI) groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (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.

In the Aleutian Islands subarea, the portion of the 2011 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 15,500 metric tons (mt) and the Community Development Quota (CDQ) is 1,900 mt as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010), as adjusted by two inseason adjustments (75 FR 54792, September 9, 2010 and 76 FR 466, January 5, 2011).

As of January 28, 2011, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 12,500 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS proportionally reallocates 12,500 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ from the Aleutian Islands subarea to the 2011 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ is added to the 2011 Bering Sea CDQ DFA. The remaining 12,500 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2011 pollock incidental catch allowance remains at 33,804 mt. As a result, the harvest specifications for pollock in the Aleutian Islands subarea included in the final harvest 2010 and 2011 specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) are revised as follows: 3,000 mt to Aleut Corporation's DFA and 0 mt to CDQ pollock. Furthermore, pursuant to § 679.20(a)(5), Table 3 of the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010), as adjusted by two inseason adjustments (75 FR 54792, September 9, 2010 and 76 FR 466, January 5, 2011), is revised to make 2011 pollock allocations consistent with this reallocation. This reallocation results in proportional adjustments to the 2011 Aleut Corporation and CDQ pollock allocations established at § 679.20(a)(5).

TABLE 3—FINAL 2010 AND 2011 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

| Area and sector | 2010 Allocations | 2010 A season [1] | | 2010 B season [1] | 2011 Allocations | 2011 A season [1] | | 2011 B season [1] |
|---|---|---|---|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA | | A season DFA | SCA harvest limit [2] | B season DFA |
| Bering Sea subarea | 813,000 | n/a | n/a | n/a | 1,266,400 | n/a | n/a | n/a |
| CDQ DFA | 81,300 | 32,520 | 22,764 | 48,780 | 127,100 | 50,840 | 35,588 | 76,260 |
| ICA [1] | 24,768 | n/a | n/a | n/a | 33,804 | n/a | n/a | n/a |
| AFA Inshore | 353,466 | 140,486 | 98,340 | 212,980 | 552,748 | 221,099 | 154,769 | 331,649 |
| AFA Catcher/Processors [3] | 282,773 | 112,389 | 78,672 | 170,384 | 442,198 | 176,879 | 123,816 | 265,319 |
| Catch by C/Ps | 258,737 | 102,836 | n/a | 155,901 | 404,612 | 161,845 | n/a | 242,767 |
| Catch by CVs [3] | 24,036 | 9,553 | n/a | 14,483 | 37,587 | 15,035 | n/a | 22,552 |
| Unlisted C/P Limit [4] | 1,414 | 562 | n/a | 852 | 2,211 | 884 | n/a | 1,327 |
| AFA Motherships | 70,693 | 28,097 | 19,668 | 42,596 | 110,550 | 44,220 | 30,954 | 66,330 |
| Excessive Harvesting Limit [5] | 123,714 | n/a | n/a | n/a | 193,462 | n/a | n/a | n/a |
| Excessive Processing Limit [6] | 212,080 | n/a | n/a | n/a | 331,649 | n/a | n/a | n/a |
| Total Bering Sea non-CDQ DFA | 706,932 | 280,973 | 196,681 | 425,959 | 1,105,496 | 442,198 | 309,539 | 663,298 |
| Aleutian Islands subarea [1] | 19,000 | n/a | n/a | n/a | 4,600 | n/a | n/a | n/a |
| CDQ DFA | 1,900 | 760 | n/a | 1,140 | 0 | 0 | n/a | 0 |
| ICA | 1,600 | 800 | n/a | 800 | 1,600 | 800 | n/a | 800 |
| Aleut Corporation | 15,500 | 15,500 | n/a | 0 | 3,000 | 3,000 | n/a | 0 |
| Bogoslof District ICA [7] | 50 | n/a | n/a | n/a | 150 | n/a | n/a | n/a |

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 28, 2011.

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

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

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

Dated: January 31, 2011.

**James P. Burgess,**

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

[FR Doc. 2011–2417 Filed 2–2–11; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 76, No. 23
Thursday, February 3, 2011

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

**[NRC–2011–0014]**

**RIN 3150–AI49**

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice Availability of Draft Regulatory Guide.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (Commission or NRC) is issuing for public comment Draft Regulatory Guide, DG–5019, "Reporting and Recording Safeguards Events." The DG–5019 describes methods that the staff of the NRC considers acceptable for licensees and certificate holders to report and record safeguards (*i.e.,* security) events that are required under the proposed changes to Title 10 of the Code of Federal Regulations (10 CFR) 73.71, "Reporting and Recording of Safeguards Events," and Appendix G to 10 CFR part 73, "Reportable and Recordable Safeguards Events."

**DATES:** Submit comments on Draft Regulatory Guide, DG–5019, May 4, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID: NRC–2011–0014 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

To ensure efficient and complete comment resolution, you should reference the section and page numbers of DG–5019 to which the comment applies.

*Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2011–0014. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.

*Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

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

*NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The DG–5019 is available electronically under ADAMS Accession Number ML100830413. In addition, electronic copies of DG–5019 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*.

*Federal rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching for documents filed under Docket ID: NRC–2011–0014.

**FOR FURTHER INFORMATION CONTACT:** Phil Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6557; e-mail: *Phil.Brochman@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

The NRC is issuing for public comment a draft regulatory guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide is temporarily identified by its task number, DG–5019, which should be mentioned in all related correspondence. The DG–5019 is proposed Revision 2 of Regulatory Guide 5.62, dated November 1987. The current issuance of DG–5019 differs substantially from the proposed Revision 2 of Regulatory Guide 5.62 that was issued as DG–5019 and published in the **Federal Register** on July 6, 2007 (72 FR 37058). The DG–5019 describes methods that the staff of the NRC considers acceptable for licensees and certificate holders to report and record safeguards (i.e., security) events that are required under the proposed changes to 10 CFR 73.71 and Appendix G to 10 CFR part 73. See the proposed rule (Docket ID: NRC–2011–0018) published elsewhere in today's **Federal Register**.

This guide applies to a range of facilities and activities licensed or certified by the NRC. These facilities and activities include reactor facilities; special nuclear material (SNM) production, use, and storage facilities; spent nuclear fuel (SNF) and high-level radioactive waste (HLW) storage and disposal facilities; and the transportation of SNM, SNF, and HLW to or from such facilities. The NRC is

issuing DG–5019 for comment in conjunction with DG–5020, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73," and the associated proposed rule. See the DG–5020 (Docket ID: NRC–2011–0015) proposed elsewhere in today's **Federal Register**.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland this 12th day of January 2011.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2011–1778 Filed 2–2–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

**[NRC–2011–0015]**

**RIN 3150–AI49**

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability of Draft Regulatory Guide.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (Commission or NRC) is issuing for public comment Draft Regulatory Guide, DG–5020, "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73." The DG–5020 is a proposed new regulatory guide. This guide describes methods that the staff or NRC considers acceptable for licensees and certificate holders to comply with the Commission's regulations implementing the provisions of Section 161A, "Use of Firearms by Security Personnel," of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a), that are found in the proposed Title 10 of the Code of Federal Regulations (10 CFR) 73.18, "Authorization for use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR 73.19, "Firearms Background Checks for Armed Security Personnel."

**DATES:** Submit comments on Draft Regulatory Guide, DG–5020, May 4, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID: NRC–2011–0015 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

To ensure efficient and complete comment resolution, you should reference the section and page numbers of DG–5020 to which the comment applies.

*Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2011–0015. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

*Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

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*Federal rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching for documents filed under Docket ID: NRC–2011–0015.

**FOR FURTHER INFORMATION CONTACT:** Philip G. Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6557; e-mail: *Philip.Brochman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

The NRC is issuing for public comment a draft regulatory guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide is temporarily identified by its task number, DG–5020, which should be mentioned in all related correspondence. The DG–5020 is a proposed new regulatory guide.

This guide describes methods that the staff or NRC considers acceptable for licensees and certificate holders to comply with the Commission's regulations implementing the provisions of Section 161A, "Use of Firearms by Security Personnel," of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201a), that are found in the proposed 10 CFR 73.18 and 10 CFR 73.19. See the proposed rule (Docket ID: NRC–2011–0018) published elsewhere in today's **Federal Register**.

Section 161A provides authority for the Commission to designate classes of facilities, radioactive material, and other property, as appropriate, for licensees and certificate holders to (1) transfer, receive, possess, transport, import, and use enhanced weapons and (2) preempt

State, local, and certain Federal firearms laws (including regulations). In addition, Section 161A mandates that each security officer complete a satisfactory fingerprint-based firearms background check by the U.S. Attorney General for designated classes of facilities, radioactive material, and other property, where the affected licensee's or certificate holder's protective strategy employs firearms and the officer's official duties require access to any covered weapon. The NRC is issuing DG–5020 for comment in conjunction with DG–5019, "Reporting and Recording Safeguards Events," and the associated proposed rule. *See* the DG–5019 (Docket ID: NRC–2011–0014) proposed elsewhere in today's **Federal Register.**

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 12th day of January 2011.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2011–1784 Filed 2–2–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

**[NRC–2011–0017]**

**RIN 3150–AI49**

## Draft Weapons Safety Assessment on the Use of Enhanced Weapons; Notice of Availability and Request for Comment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (Commission or NRC) is seeking input from the public, licensees, certificate holders, and other stakeholders on a draft guidance document entitled "Weapons Safety Assessment" (WSA). This guidance would be used by licensees and certificate holders applying to the NRC to obtain enhanced weapons under the NRC's proposed rule titled "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," published in the Proposed Rule section of today's **Federal Register** (NRC–2011–0018). A completed WSA would be part of an application to the NRC for the use for enhanced weapons.

The Commission is authorized under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), to approve licensees' and certificate holders' possession of enhanced weapons as part of a protective strategy for defending NRC-regulated facilities and radioactive material against malevolent acts. Volumes 1 through 3 of the draft WSA are being issued for public review and comment.

**DATES:** Submit comments on Volumes 1 through 3 of the draft WSA by May 4, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID: NRC–2011–0017 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

To ensure efficient and complete comment resolution, you should reference the section and page numbers of the WSA volume to which the comment applies. You should not include any site-specific security information in your comments.

*Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2011–0017. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

*Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods.

*NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* Volumes 1 through 3 of the draft WSA are publicly available under ADAMS Package No. ML103190273.

*Federal rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching for documents filed under Docket ID: NRC–2011–0017.

**FOR FURTHER INFORMATION CONTACT:** Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6557; e-mail: *Phil.Brochman@nrc.gov;* or Susan Bagley, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2240; e-mail: *Susan.Bagley@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Public Law 109–58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding Section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with new authority that will enhance security at designated facilities of NRC licensees and certificate holders. Section 161A also provides the NRC with new authority that will enhance security with respect to the possession or use of certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property that has been determined by the Commission to be of significance

to the common defense and security or the public health and safety.

Under Section 161A of the AEA, the Commission is authorized to approve licensees' and certificate holders' possession of enhanced weapons as part of a protective strategy for defending NRC-regulated facilities and radioactive material from malevolent acts. Previously, most NRC licensees and certificate holders were barred under Federal law from possessing such weapons. The NRC is publishing in the Proposed Rules section of today's **Federal Register** a proposed rule titled "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications (Docket ID: NRC–2011–0018)." The NRC is proposing to add requirements to Title 10 of the Code of Federal Regulations (10 CFR), in Section 73.18, for licensees and certificate holders to apply to the NRC to obtain enhanced weapons (see 10 CFR 73.2 of the proposed rule for a definition of enhanced weapons). Under 10 CFR 73.18(f), licensees and certificate holders applying to the NRC to possess and use enhanced weapons would be required to include a completed WSA as part of their application.

The draft WSA provides a methodology to evaluate and review the safety impacts arising from the proposed use of enhanced weapons on licensee and certificate holder facilities and personnel, and on adjoining public areas. The NRC developed the draft WSA under contract with the U.S. Army Corps of Engineers, Protective Design Center (USACE–PDC), in Omaha, Nebraska. The draft WSA is identified as document number "USACE PDC NRC TR 06–10.1 through 10.5." When submitted to the NRC as part of an application to obtain enhanced weapons, a completed WSA would be controlled as Safeguards Information or classified National Security Information, as appropriate, because of the sensitive nature of the information contained in the WSA.

The evaluation of the appropriateness of specific types of enhanced weapons at NRC-regulated facilities is a new effort for the NRC. As part of the development process, the NRC staff provided a draft of the WSA to three NRC licensees (two power reactor licensees and a Category I strategic special nuclear material licensee) as part of voluntary pilot program to identify any major challenges to using the WSA template. The results of the pilot program have been incorporated into the draft WSA being submitted for public comment.

The NRC is seeking comments on Volumes 1 through 3 of the draft WSA from the public, licensees, certificate holders, and other stakeholders. The NRC staff also intends to hold a public meeting on the draft WSA in conjunction with other discussions on the proposed rule and the supporting draft guidance documents. The public meeting is intended to answer questions on the draft WSA and facilitate commenters' submission of written comments. The NRC does not intend to receive oral comments on the draft WSA.

The NRC will publish a separate notice on the date and location of this public meeting in the **Federal Register**.

Dated at Rockville, Maryland this 12th day of January 2011.

For the Nuclear Regulatory Commission.

**Richard P. Correia,**

*Director, Division of Security Policy, Office of Nuclear Security and Incident Response.*

[FR Doc. 2011–1781 Filed 2–2–11; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### 13 CFR Chapter III

**[Docket No.: 110119042–1041–01]**

**RIN 0610–XA04**

### Request for Comments: Review and Improvement of EDA's Regulations

*Correction*

In proposed rule document 2011–1937 beginning on page 5501 in the issue of Tuesday, February 1, 2011 make the following correction:

On page 5503, in the first column, in the 14th line, "March 14, 2011" should read "March 9, 2011".

[FR Doc. C1–2011–1937 Filed 2–2–11; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2010–1175; Notice No. 11–02]**

**RIN 2120–AJ83**

### Installed Systems and Equipment for Use by the Flightcrew

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration proposes to amend design requirements in the airworthiness standards for transport category airplanes to minimize the occurrence of design-related flightcrew errors. The new design requirements would enable a flightcrew to detect and manage their errors when the errors occur. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States (U.S.) and those of the European Aviation Safety Agency (EASA) without affecting current industry design practices.

**DATES:** Send your comments on or before April 4, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–1175 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200

New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule, contact Loran Haworth, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1133; facsimile (425) 227–1320, e-mail *Loran.Haworth@faa.gov.*

For legal questions about this proposed rule, contact Doug Anderson, FAA, Office of the Regional Counsel (ANM–7), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile 425–227–1007; e-mail *Douglas.Anderson@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Later in this preamble, under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

## Authority for This Rulemaking

The FAA's authority to issue rules on 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 III, Section 44701, "General requirements." Under that section, the FAA is charged with prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

## Background

Airworthiness standards for type certification of transport category airplanes for products certified in the U.S. are in part 25. EASA's Certification Specifications for Large Aeroplanes (CS–25) are the corresponding airworthiness standards for products certified in Europe. While part 25 and CS–25 are similar, they differ in several respects.

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) through its Human Factors Harmonization Working Group to review existing regulations and recommend measures to address the contribution of design and certification of transport category airplane flight decks to flight crew error. The ARAC submitted its recommendations to the FAA in a report, Human Factors—Harmonization Working Group Final Report, dated June 15, 2004. A copy of the report is in the docket for this rulemaking. This proposed rule is a result of this harmonization effort.

*Managing Flightcrew Performance*

There are several regulations that are designed to address differing aspects of flight crew performance. Flightcrew capabilities are carefully considered through—

(1) Airworthiness standards for the issuance of type certificates for airplanes;

(2) Airplane operating requirements (part 121);

(3) Certification and operating requirements (part 119); and

(4) Requirements for issuing pilot certificates and ratings (part 61).

Taken together, these requirements provide a high degree of operating safety in the air transportation system. These requirements take into consideration equipment design, training, qualifications for pilot certificates, airplane operations and procedures, and the interaction of systems, equipment and personnel and how each contribute to operating safely through risk management.

The proposed requirements in § 25.1302 would augment existing regulations with more explicit requirements for design attributes related to managing and avoiding flight crew error. Design characteristics can contribute to flight crew error.

EASA incorporated this rule in 2006 based on the ARAC recommendations. U.S. and European airworthiness requirements are unharmonized at the present time, and will continue to be unharmonized if the FAA does not issue a final rule on this subject. The requirements of these proposed standards are similar to those in the current EASA CS 25.1302 (Amendment 25/3). Means of compliance are intended to be identical.

*Current Requirements*

There are several regulations that apply to aspects of flight crew performance. These regulations are listed and discussed in the ARAC report, Human Factors—Harmonization Working Group Final Report, June 15, 2004, which is posted on the Web site *http://www.regulations.gov* (in the same docket as this proposed rulemaking).

The proposed § 25.1302 would augment these existing generally applicable rules with more explicit requirements for design attributes related to avoiding and managing flightcrew error. Other ways to avoid and manage flightcrew error are regulated through requirements for licensing and qualifying flightcrew members and aircraft operations. Taken together, these complementary approaches provide a high degree of safety.

This complementary approach to avoiding and managing flightcrew error is important. It recognizes that equipment design, training, qualifying through licensing, establishing correct operations and procedures, all contribute to safety by avoiding or minimizing risk. An appropriate balance is needed among them. There have been cases in the past where design characteristics known to contribute to flightcrew error were accepted, with the rationale that training or procedures would mitigate that risk. We now know that such an approach may be inappropriate. Conversely, it would also be inappropriate to require equipment design to always provide complete risk avoidance or mitigation, because such an approach may not be practicable in some cases, and may even create new risks.

Therefore, a proper balance is needed among design approval requirements in the minimum airworthiness standards of part 25 and requirements for training/licensing/qualification, operations, and procedures. We have developed the requirements proposed here with the intent of achieving that balance.

## General Discussion of the Proposal

Flightcrews contribute positively to the safety of the air transportation system using their ability to assess complex situations and make reasoned decisions. However, even trained, qualified, checked, alert flightcrew members can make errors. Some errors may be influenced by the design of airplane systems and their flightcrew interfaces. Flightcrew errors that could impact safety are often detected and/or mitigated in the normal course of events. However, accident analyses have identified flightcrew performance and error as significant factors in a majority of accidents involving transport category airplanes.

Accidents often result from a sequence, or combination, of flightcrew errors and safety related events. The design of the flight deck and other systems can influence flightcrew task performance and may also affect the rate of occurrence and effects of flightcrew errors.

Human error is generally characterized as a deviation from what is considered correct in some context. In the hindsight of analysis of accidents, incidents, or other events of interest, these deviations might include: an inappropriate action, a difference from what is expected in a procedure, a mistaken decision, a slip of the fingers in typing, an omission of some kind, and many other examples.

*Applicability and Scope*

The introductory sentence of proposed § 25.1302 states that the provisions of the section apply to each item of installed equipment intended for use by the flightcrew in operating the airplane from their normally seated positions on the flight deck. An example of such installed equipment would be a display that provides the flightcrew with information enabling them to navigate the airplane.

As used in this section, the term "flightcrew members" is intended to include any or all individuals comprising the minimum flightcrew as determined for compliance with § 25.1523. The phrase "From their normally seated position" means that, to use the equipment addressed by this proposed rule, flightcrew members are seated at their normal duty stations for operating the airplane. The proposed rule would not apply to such items as certain circuit breakers or maintenance controls intended for use by the maintenance crew or by the flightcrew when the airplane is not being operated.

The proposal would require that installed equipment "individually and in combination with other such equipment" must be designed so that qualified flightcrew members who are trained and checked in its use can safely perform their tasks associated with the intended function of the installed equipment. The quoted phrase means that the applicant must consider the use of the equipment in context with other installed equipment to show compliance with the requirements of this proposal. The installed equipment may not prevent other equipment from complying with these requirements. As an example, applicants may not design a display so that the information it provides is either inconsistent with or conflicts with information from other installed equipment.

The provisions of this proposed rule presume that a qualified flightcrew is trained and checked to use the installed equipment, as required by the operational rules. If the applicant seeks a design approval before a training program is accepted, the applicant should document any novel, complex or highly integrated design features and any different or new assumptions related to the design that have the potential to affect training time or flightcrew procedures (for example, flightcrew interpretation, response, or abilities).

The FAA envisions for the proposed requirement that equipment be designed so the flightcrew can safely perform tasks associated with the equipment's intended function. This requirement would apply for operations in both normal and non-normal conditions. Tasks intended for performance under non-normal conditions are generally those prescribed by non-normal (including emergency) flightcrew procedures in the airplane flight manual. The phrase "safely perform their tasks" describes one of the safety objectives of this proposed requirement. The proposal requires the equipment be designed to enable the flightcrew to perform their tasks with sufficient accuracy and in a timely manner, without unduly interfering with other required tasks. The phrase "Tasks associated with its intended function" would include those tasks required to operate the equipment, such as entering flight plan data into a flight management system, and tasks for which the equipment's intended function provides support, such as setting "bugs" for minimum and critical speeds to support airspeed control by the flightcrew.

*Controls and Information*

The proposed § 25.1302(a) would require the applicant to install appropriate controls and provide necessary information for any flight deck equipment used by the flightcrew to accomplish tasks associated with their intended function as identified in the first paragraph of § 25.1302. To show compliance, the applicant must identify the tasks associated with the intended function of installed equipment, and show that the controls for the equipment, and the information provided for operation of the equipment, are adequate to enable the flightcrew members to perform the identified tasks. The FAA is proposing these requirements because they are not adequately reflected in other parts of 14 CFR part 25 for the specific subject of human factors.

The proposed § 25.1302(b) addresses requirements for flight deck controls and information to ensure that the flightcrew can accomplish their tasks. The intent is to ensure that the design of control and information devices makes them usable by the flightcrew. This requirement would reduce design-induced flightcrew errors by imposing design requirements on the presentation of information on the flight deck and on flight deck controls. Proposed paragraphs (b)(1) through (b)(3) specify these design requirements.

Design requirements for information and controls are necessary to:

- Properly support the flightcrew in doing their tasks.
- Make available to the flightcrew appropriate, effective means to carry out planned actions.
- Enable the flightcrew to have appropriate feedback information about the effects of their actions on the airplane.

The proposed § 25.1302(b)(1) specifically requires that controls and information intended for the flightcrew must be provided in a clear and unambiguous manner, at a resolution and precision appropriate to the task. As applied to information, "clear and unambiguous" means that it can be:

- Perceived correctly (is legible).
- Understood in the context of flightcrew tasks associated with the intended functions of the equipment such that the flightcrew can perform the associated tasks.

The proposed requirement that controls must be provided in a clear and unambiguous manner means the crew must be able to correctly and reliably identify the control by using control distinctiveness such as control shape, color, and location. This requirement is separate from, and in addition to, the requirement for control labeling in § 25.1555(a). The proposed § 25.1302(b)(1) also requires that the information or control be provided, or operate, at a level of detail and accuracy appropriate to accomplishing the task. Insufficient resolution or precision would prevent the flightcrew from performing the task adequately. On the other hand, excessive resolution could result in poor readability or the implication that the task should be carried out more precisely than is actually necessary, thus making the task more difficult.

The proposed § 25.1302(b)(2) requires that controls and information be accessible and usable by the flightcrew in a manner consistent with the urgency, frequency, and duration of their tasks. Controls used more frequently or urgently must be readily

accessed, or require fewer steps or actions to perform the task. Less accessible controls may be acceptable if they are needed less frequently or urgently. Controls used less frequently or urgently should not interfere with those used more frequently or urgently. Similarly, tasks requiring a longer time for interaction with the system should not interfere with accessibility to information required for urgent or frequent tasks.

The proposed § 25.1302(b)(3) requires that equipment must present information advising the flightcrew of the effects of their actions on the airplane or systems, if safe operation depends on their awareness of those effects. The intent is that the flightcrew be aware of system or airplane states resulting from their actions, and thus be able to detect and correct their own errors. This subparagraph is included because new technology enables new kinds of flightcrew interfaces that previous requirements do not address.

*Equipment Behavior*

The proposed § 25.1302(c) requires that installed equipment be designed so that equipment behavior that is operationally relevant to flightcrew tasks is:

- Predictable and unambiguous.
- Designed to enable the flightcrew to intervene in a manner appropriate to the task (and intended function).

"Equipment behavior" in the context of this proposal refers to the function of the equipment as perceived by a flightcrew member. Although improved flight deck technologies involving integrated and complex information and control systems have increased safety and performance, they have also introduced the need to ensure proper interaction between the flightcrew and those systems. Service experience has shown that some equipment behavior, especially behavior of some automated systems, is very complex. Some system behavior is dependent on logical states or mode transitions not well understood or expected by the flightcrew. Such design characteristics can confuse the flightcrew and have contributed to incidents and accidents.

"Operationally-relevant behavior" is the combined effect of the equipment's logic, controls, and displayed information on the flightcrews' awareness or perception of the system's operation, which affects the flightcrews' planning or operation of the system. The intent here is to distinguish such system behavior from the functional logic within the system design, much of which the flightcrew does not know or need to know and which should be transparent to them.

The proposed § 25.1302(c)(1) requires that system behavior be such that a qualified flightcrew can know what the system is doing and why. It requires that operationally relevant system behavior be "predictable and unambiguous." This means that a crew can retain enough information about what their action, or a changing situation, will cause the system to do under foreseeable circumstances so that they can operate the system safely. One reason that system behavior must be unambiguous is that crew actions may have different effects on the airplane depending on its current state or operational circumstances. For example, autopilot response to selection or arming of a different mode can depend on which mode is currently active. In such a case the autopilot must be designed to avoid ambiguity about the result of possible flightcrew selections.

The proposed § 25.1302(c)(2) requires that the design enable the flightcrew to determine a need for, choose, and take appropriate action, or to change or alter an input to the system, in a manner appropriate to the task, and to monitor the system and airplane response to the action. For example, to respond appropriately to a new Air Traffic Control (ATC) altitude clearance, the flightcrew needs information about the active flight guidance and flight management modes, what means are available to comply with the new ATC requirement given the current airplane and system states, how to select those means, and how to determine that the expected response is being achieved.

*Error Management*

The proposed § 25.1302(d) addresses the reality that even well-trained, checked, proficient flightcrews using well-designed systems will make errors. The proposal requires that equipment be designed to enable the flightcrew to manage such errors. For the purpose of this rule, errors "resulting from flightcrew interaction with the equipment" are errors that are in some way attributable to, or related to, design of the controls, behavior of the equipment, or information presented. Examples of designs or information that could cause errors are complex indications and controls that are inconsistent with each other or with other systems on the flight deck. Another example is the presentation of a procedure for the crew to follow that is inconsistent with the design of the equipment. Such errors are considered to be within the scope of this proposed requirement.

The proposed requirement that a design enable the flightcrew to "manage errors" means that the design meets the following criteria to the extent practicable:

- Flightcrew must be able to detect and/or recover from errors resulting from their interaction with the equipment.
- Effects of such flightcrew errors on the airplane functions or capabilities must be evident to the flightcrew, and continued safe flight and landing must be possible.
- Flightcrew errors must be discouraged by switch guards, interlocks, confirmation actions, or other effective means, and
- Effects of errors with potential safety consequences must be precluded by system logic or other aspects of system design that will detect and correct such errors.

The requirement to manage errors applies to those errors that can be reasonably expected in service from qualified, trained and checked flightcrews. Errors "reasonably expected in service" include those that have occurred in service in the past with similar or comparable equipment. It also includes errors that can be predicted to occur based on general experience and on knowledge of human performance capabilities and limitations as they relate to use of the types of controls, information, or system logic being assessed.

The proposed § 25.1302(d) includes the following statement: "This paragraph (d) does not apply to * * * skill-related errors associated with manual control of the airplane." That statement means to exclude errors resulting from flightcrew lack of proficiency in controlling flight path and attitude with the primary roll, pitch, yaw, and thrust controls. These issues are considered adequately addressed by existing requirements, such as part 25 Subpart B and § 25.671(a), which require that each control and control system operate with the ease, smoothness, and positiveness appropriate to its function. We do not intend that equipment design be required to compensate for deficiencies in flightcrew training or experience. This proposed rule assumes at least the minimum flightcrew requirements for the intended operation, as discussed previously.

This proposal only concerns the management of errors resulting from flightcrew decisions, acts or omissions that occur when they are operating the airplane in "good faith." Therefore, this paragraph contains exceptions for actions that are intentionally taken with

malicious or purely contrary intent (that is, actions intended to have incorrect or unsafe results); for actions arising from a crewmember's substantial disregard for safety (that is, reckless conduct); and for actions taken as a result of acts or threats of violence (for example, actions taken under duress). It is unreasonable to expect that airplane designers would be able to anticipate and prevent these types of actions. The EASA regulation, CS–25.1302, allows applicants to assume that the flightcrew is "acting in good faith." While our proposed § 25.1302(d) replaces this term with a more detailed enumeration of exceptions, our intent is the same, and the regulatory effect would be harmonized.

On the other hand, pilots do occasionally take erroneous actions that, while intentional, are not intended to have unsafe consequences; that is, they are "acting in good faith." An example of an intentional error that might occur would be a situation where an alert occurs, but the flightcrew does not perform the associated procedure because they believe it to be a nuisance alert. In this situation § 25.1302(d) requires the applicant to show that this error can be detected and managed by the flightcrew.

Requiring errors to be manageable only "to the extent practicable" addresses both economic and operational practicability. We want to avoid imposing requirements without considering economic feasibility and commensurate safety benefits. We also need to avoid introducing into the design any error management features that would inappropriately impede flightcrew actions or decisions in normal or non-normal conditions. For example, we do not intend to require so many guards or interlocks on the means to shut down an engine that the flightcrew would be unable to do this reliably within the available time. We do not intend to reduce the authority or means for the flightcrew to intervene or carry out an action when it is their responsibility to fly the airplane to the best of their abilities.

The scope of applicability of this material is limited to errors for which there is a contribution from or relationship to design. Even so, we expect § 25.1302(d) to result in design changes that will protect against other types of errors as well. One example might be the use of an "undo" function that allows the flightcrew to back out of a function once selected in certain designs.

*Availability of Draft Advisory Circular*

Because existing guidance does not specifically address the requirements of this proposal, a draft advisory circular accompanies this proposed rule and is posted on the FAA's draft document Web site, on the Internet, at *http://www.faa.gov/aircraft/draft_docs/*.

**Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment and Unfunded Mandates Assessment**

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

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

The reasoning for this determination follows. The proposed rule, § 25.1302, addresses human factors as they apply to installed equipment on the flight deck because crew limitations and design-related errors are not currently covered by the regulations in so specific a manner. The proposed rule would harmonize with EASA's CS 25.1302, which is already in effect. Manufacturers and modifiers of transport category aircraft would be affected by this proposed rule. But a review of current manufacturers has revealed they already meet or intend to meet the EASA standard as it exists in CS 25.1302. Since the requirements in the proposed rule are in CS 25.1302, the manufacturers would incur no additional costs. This is, therefore, a clarification of the intent for CS 25.1302 by EASA and the FAA.

The compliance of manufacturers with the EASA requirements would increase safety by (1) reducing the likelihood of flight crew errors and (2) enabling detection and recovery from errors that do occur, or mitigating their effects. Since the manufacturers intend to comply with the EASA requirements, however, there would be no additional safety benefits. The proposed rule would provide economic benefits from reduced joint certification costs brought about by a reduction in data collection and analysis and by a reduction in the paperwork and time required in the certification process. The FAA therefore has determined that this proposed rule would have minimal costs with positive net benefits and does not warrant a full regulatory evaluation. The FAA requests comments regarding this determination.

The FAA has also determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

*Regulatory Flexibility Determination*

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

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

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

As noted above, this proposed rule would not entail any additional costs to transport category manufacturers as they are already in compliance or intend to fully comply with the EASA standard. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

*International Trade Impact Assessment*

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

*Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

*Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

*Paperwork Reduction Act*

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

*International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

*Environmental Analysis*

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 4(j), FAA Order 1050.1D, appendix 4, and involves no extraordinary circumstances.

*Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a "significant energy action" under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

*Additional Information*

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure that the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider all comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal because of the comments it receives.

*Proprietary or Confidential Business Information*

Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD–ROM, mark the outside of the disk or CD–ROM, and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

*Availability of Rulemaking Documents*

You can get an electronic copy using the Internet by—

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

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Human factors, Reporting and record keeping requirements, Safety, Transportation.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. Add § 25.1302 to Subpart F to read as follows:

**§ 25.1302 Installed systems and equipment for use by the flightcrew.**

This section applies to installed systems and equipment intended for flightcrew members' use in operating the airplane from their normally seated positions on the flight deck. The applicant must show that these systems and installed equipment, individually and in combination with other such systems and equipment, are designed so that qualified flightcrew members trained in their use can safely perform all of the tasks associated with the systems' and equipment's intended function. Such installed equipment and systems must meet the following requirements:

(a) Flight deck controls must be installed to allow accomplishment of all the tasks required to safely perform the equipment's intended function including providing information to the flightcrew that is necessary to accomplish the defined tasks.

(b) Flight deck controls and information intended for the flightcrew's use must:

(1) Be provided in a clear and unambiguous manner at a resolution and precision appropriate to the task.

(2) Be accessible and usable by the flightcrew in a manner consistent with the urgency, frequency, and duration of their tasks, and

(3) Enable flightcrew awareness, if awareness is required for safe operation, of the effects on the airplane or systems resulting from flightcrew actions.

(c) Operationally-relevant behavior of the installed equipment must be:

(1) Predictable and unambiguous, and

(2) Designed to enable the flightcrew to intervene in a manner appropriate to the task.

(d) To the extent practicable, installed equipment must incorporate means to enable the flightcrew to manage errors resulting from the kinds of flightcrew interactions with the equipment that can be reasonably expected in service. This paragraph does not apply to any of the following:

(1) Skill-related errors associated with manual control of the airplane;

(2) Errors that result from decisions, actions, or omissions committed with malicious intent;

(3) Errors arising from a crewmember's reckless decisions, actions, or omissions reflecting a substantial disregard for safety; and

(4) Errors resulting from acts or threats of violence, including actions taken under duress.

Issued in Washington, DC on January 26, 2011.

**Dorenda D. Baker,**

*Director, Aircraft Certification Service.*

[FR Doc. 2011–2358 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 27 and 29

### FAA Public Forum To Conduct Regulatory Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The FAA announces an informal meeting to discuss the FAA rotorcraft rules, 14 CFR parts 27 and 29, and to gather any relevant information that will help with drafting any future rule changes.

**DATES:** The public meeting will be held on March 8, 2011, from 1 to 5 p.m. (ET).

**ADDRESSES:** The meeting is in conjunction with the Helicopter Association International (HAI) Heli-Expo at the Orange County Convention Center, Room S.310, South Concourse, 9899 International Drive, Orlando, Florida. Attendees are not required to register for the Heli-Expo conference to participate in this public forum.

**FOR FURTHER INFORMATION CONTACT:** Fred Stellar, Rotorcraft Standards Staff, ASW–110, 2601 Meacham Boulevard, Fort Worth, TX 76137; telephone (817) 222–5179; or by e-mail at *fred.stellar@faa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting is announced pursuant to 49 U.S.C. 40113 and 49 U.S.C. 44701 to take actions the FAA considers necessary in order to enhance safety in air commerce and the DOT policies and procedures to seek public participation in that process.

**Purpose of the Public Meeting**

The purpose of this informal meeting is to gather information that may drive regulatory changes. The FAA will review and consider all material presented by participants at the public meeting. FAA will use the information to analyze the need and scope for potential rule changes to enhance rotorcraft safety. The goal is to reduce the accident/incident rate for rotorcraft through promulgation of minimum safety standards in line with today's technology and helicopter operations. The FAA will have management and technical specialists available from the Aircraft Certification Service to entertain questions and discuss issues presented by the audience. Attendance is open to all interested persons, but will be limited to the space available.

**Public Meeting Procedures**

At this meeting, we will outline our approach to conduct a comprehensive review of 14 CFR parts 27 and 29 rules for rotorcraft airworthiness. We will give a brief presentation discussing the primary safety concerns driving potential revision of rotorcraft rules. Following the brief presentation, the audience will be encouraged to comment or make suggestions regarding potential changes to the regulations governing rotorcraft airworthiness. An FAA representative will facilitate the meeting per the following procedures:

(1) The meeting will be informal and non-adversarial. No individual will be subject to cross examination by any other participant. FAA representatives on the panel may ask questions to clarify statements and to ensure an accurate record. Any statement made during the meeting by a panel member should not be construed as an official position of the government.

(2) There will be no admission fees or other charges to attend or to participate in the public meeting. The meeting will be open to all persons, subject to availability of space in the meeting room. The FAA will make every effort to accommodate all persons wishing to attend.

(3) Speakers may be limited to 5–10 minute statements.

(4) The meeting will be recorded by a court reporter.

Issued in Fort Worth, Texas on January 27, 2011.

**Kimberly K. Smith,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2011–2317 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 3, 32, 33, and 35

### Commodity Options and Agricultural Swaps

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Dodd-Frank Act provides that swaps in an agricultural commodity (as defined by the Commission) are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to Commodity Exchange Act ("CEA" or "Act"). The Dodd-Frank Act also includes options (other than an option on a futures contract) in its definition of swaps. Broadly speaking, the rules proposed herein would implement regulations whereby swaps in agricultural commodities and all commodity options (including options on both agricultural and non-agricultural commodities), other than options on futures, may transact subject to the same rules as all other swaps. The proposed rules for swaps in an agricultural commodity would repeal and replace the Commission's regulations concerning the exemption of swap agreements. Because the Dodd-Frank Act defines commodity options (other than options on futures) as swaps, the proposed rules for options would substantially amend the Commission's regulations regarding commodity option transactions. Also, current regulations on domestic exchange-traded commodity option transactions applies not only to exchange-traded options on futures (which are excluded from the Dodd-Frank definition of a swap), but also to exchange-traded options on physical commodities (which are within the Dodd-Frank swap definition). Therefore, the proposed rules would remove references to options on physical commodities from the Commission's regulations for exchange-traded options on futures.

**DATES:** Written comments must be received on or before April 4, 2011.

**ADDRESSES:** You may submit comments, identified by RIN number 3038–AD21, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's Regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] Title VII of the Dodd-Frank Act [3] amended the CEA [4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 723(c)(3) of the Dodd-Frank Act provides that swaps in an agricultural commodity (as defined by the Commission) [5] are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to CEA section 4(c).

[1] 17 CFR 145.9. Unless otherwise indicated, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq.*

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] As discussed below, in accordance with the mandate of the Dodd-Frank Act, the Commission has recently proposed a definition of the term "agricultural commodity." *See* 75 FR 65586, Oct. 26, 2010.

Further, section 733 of the Dodd-Frank Act, new CEA section 5h(b)(2), provides that a swap execution facility ("SEF") may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

In addition to the provisions on swaps in an agricultural commodity, the Dodd-Frank Act definition of "swap" includes options (other than options on futures). Section 721 of the Dodd-Frank Act adds new section 1a(47) to the CEA, defining "swap" to include not only "any agreement, contract, or transaction commonly known as," among other things, "an agricultural swap" or "a commodity swap," but also "[an] option of any kind that is for the purchase or sale, or based on the value, of * * * commodities * * *."[6] As a result of the Dodd-Frank changes, the Commission is issuing this notice proposing: (1) To withdraw and replace current part 35;[7] (2) to substantially amend current part 32;[8] (3) to withdraw rule 3.13, which will be rendered moot by the withdrawal of rule 32.13; and (4) to amend part 33[9] to remove references to options on physical commodities. As proposed, new part 35 and revised parts 32 and 33 will provide the regulatory authority under which market participants may enter into, respectively, swaps in an agricultural commodity ("agricultural swaps")[10] and commodity options.[11]

To that end, this notice includes a background discussion of the statutory and regulatory framework governing agricultural swaps and commodity options. The notice also provides an overview and summary of the comments received on the Commission's Advanced Notice of Proposed Rulemaking regarding the agricultural swaps provisions in the Dodd-Frank Act.[12] Finally, the notice includes an explanation of the rulemakings proposed herein, a discussion of CEA section 4(c) as the authority for the agricultural swaps aspect of this rulemaking, a request for comment on the proposed rulemaking, and a section addressing related matters.

## II. Background

### *A. Agricultural Swaps*

#### i. Pre Dodd-Frank

Since 2000, bilateral swaps[13] between certain sophisticated counterparties have been generally exempted from the Commission's jurisdiction pursuant to current CEA section 2(g),[14] which was added to the CEA by the Commodity Futures Modernization Act of 2000 ("CFMA").[15] However, current section 2(g) specifically excludes an "agreement, contract, or transaction" in an "agricultural commodity" from the CFMA swaps exemption.[16]

While the term "agricultural commodity" is not specifically defined in the Act,[17] it is used in the Act in conjunction with the definition of the term "exempt commodity," which is defined as neither an "agricultural commodity" nor an "excluded commodity."[18] The effect of current CEA section 2(g) was that swaps involving exempt and excluded commodities were allowed to transact largely outside of the Commission's jurisdiction or oversight. And while the Dodd-Frank Act largely rewrites the world of law and regulation applicable to swaps in non-agricultural commodities,[19] swaps involving agricultural commodities,[20] including both the enumerated agricultural commodities and other non-enumerated agricultural commodities,[21] remain subject to the Commission's pre-CFMA swaps regulations as set forth in part 35.[22]

Part 35 provides a broad exemption for certain swap agreements. As noted, part 35 originally applied to swaps in all

[6] *See* new CEA section 1a(47), as added by section 721 of the Dodd-Frank Act. The Dodd-Frank swap definition excludes exchange-traded options on futures, but not exchange-traded options on physical commodities (*see* new CEA section 1a(47)(B)(i)). Accordingly, the Commission is amending part 33 of its regulations, "Regulation of Domestic Exchange-Traded Commodity Option Transactions," to the extent that Part 33 applies to exchange-traded options on physical commodities, which are swaps under the Dodd-Frank definition. The rules proposed herein would remove any reference in part 33 to "options on physicals," and such transactions would become subject to the regulations in revised part 32, discussed below. Other options excluded from the definition of swap are options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 and the Securities Exchange Act of 1934 (*see* new CEA section 1a(47)(B)(iii)) and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (*see* new CEA section 1a(47)(B)(iv)).

[7] 17 CFR Part 35.

[8] 17 CFR Part 32.

[9] 17 CFR Part 33.

[10] When this notice refers to "agricultural swaps," it is referring to swaps in an agricultural commodity, as identified in section 723(c)(3) of the Dodd-Frank Act.

[11] "Commodity option" and "commodity option transaction" are defined in 17 CFR 1.3(hh). When this notice refers generally to "commodity options" or "options," the terms will refer to all commodity options transactions other than those options on futures that are excluded from the Dodd-Frank definition of swap (*see* footnote 6, above).

[12] *See* Agricultural Swaps, 75 FR 59666, Sept. 28, 2010.

[13] Prior to the Dodd-Frank Act, the Commission had defined a "swap" as follows: "A swap is a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap [including an agricultural swap], at least one of the assets or cash flows is related to the price of one or more commodities." (*See* 72 FR 66099, note 7, Nov. 27, 2007). As discussed above, *see* new CEA section 1a(47) for the statutory definition of a "swap," as added to the CEA by section 721 of the Dodd-Frank Act.

[14] Current section 2(g) provides:

No provision of this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) Entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) Subject to individual negotiation by the parties; and

(3) Not executed or traded on a trading facility.

CEA section 2(g).

[15] Current CEA section 2(g) was added to the CEA as section 105(b) of the CFMA, enacted as Appendix E to Public Law 106–554.

[16] Notably, current CEA section 2(g) is not the only statutory provision added by the CFMA that excludes or exempts bilateral swaps between eligible contract participants from the Commission's jurisdiction. Current CEA section 2(d)(1) excludes any such bilateral "agreement, contract, or transaction" in excluded commodities from Commission jurisdiction, while CEA section 2(h)(1) creates a similar exemption for a "contract, agreement or transaction" in exempt commodities.

[17] Note that the Commission has proposed for comment a formal definition of agricultural commodity. *See* Agricultural Commodity Definition, 75 FR 65586, Oct. 26, 2010.

[18] "The term 'exempt commodity' means a commodity that is not an excluded commodity or an agricultural commodity." Current CEA section 1a(14). An "excluded commodity" is defined in current CEA section 1a(13) to include financial commodities such as interest rates, currencies, economic indexes, and other similar items.

[19] *See* Dodd-Frank non-agricultural swaps discussion, below.

[20] *See* 75 FR 59666, at 59667, Sept. 28, 2010, for an explanation of the legislative history discussing "agricultural commodity" as used in CEA section 2(g).

[21] "Enumerated agricultural commodities" typically refers to the list of commodities specifically enumerated in the CEA definition of "commodity" at current CEA Section 1a(4) (renumbered as section 1a(9) under Dodd-Frank): Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice (but not onions).

[22] 17 CFR Part 35 remains in effect for agricultural swaps because it was originally adopted under the Commission's CEA section 4(c) exemptive authority, and section 723(c)(3)(B) of the Dodd-Frank Act grandfathers existing 4(c) exemptions in the context of agricultural swaps.

commodities.[23] After the CFMA amendments to the CEA, which statutorily exempted swaps on "exempt" and "excluded" commodities from virtually all of the Commission's jurisdiction, part 35 remained relevant only for agricultural swaps. With the exception of three outstanding exemptive orders related to cleared agricultural basis and calendar swaps [24] (which exempt certain swaps transactions from part 35's non-fungibility and counterparty creditworthiness requirements), part 35 is the sole existing authority under which market participants may transact agricultural swaps that are not options.[25]

ii. Dodd-Frank Swaps Provisions

a. Non-Agricultural Swaps

Under the CEA, as amended by the Dodd-Frank Act, only eligible contract participants ("ECPs") [26] may enter into a swap, unless such swap is entered into on a designated contract market ("DCM"),[27] in which case any person may enter into the swap.[28]

New CEA section 2(h), as added by section 723(a)(3) of the Dodd-Frank Act, establishes a clearing requirement for swaps. Under that subsection, the Commission would determine, based on factors listed in the statute, whether a swap, or a group, category, type, or class of swaps, should be required to be cleared. A swap that is required to be cleared must be executed on a DCM or a SEF,[29] if a DCM or SEF makes the swap available for trading. Swaps that are not required to be cleared may be executed bilaterally. Notwithstanding the above, a swap entered into by a commercial end user [30] is not subject to the mandatory clearing requirement; however an end user may opt to submit the swap for clearing.

Section 731 of the Dodd-Frank Act adds a new section 4s to the CEA that provides for the registration and regulation of swap dealers and major swap participants.[31] The new requirements for swap dealers and major swap participants include, in part, capital and margin requirements, business conduct standards, and reporting, recordkeeping, and documentation requirements.

Section 737 of the Dodd-Frank Act amends current CEA section 4a regarding position limits. Under the Dodd-Frank provisions and amended CEA section 4a, the Commission is directed to adopt position limits for futures and options traded on or subject to the rules of a designated contract market, and swaps that are economically equivalent to such futures and exchange-traded options for both exempt and agricultural commodities.

b. Agricultural Swaps

As noted above, under section 723(c)(3) of the Dodd-Frank Act, swaps in an "agricultural commodity" (as defined by the Commission) [32] are prohibited unless the swap is entered into pursuant to an exemption granted under CEA section 4(c). The requirements of section 4(c) are discussed in greater detail, below.[33]

Dodd-Frank section 723(c)(3)(B) includes a "grandfather" clause providing that any rule, regulation, or order regarding agricultural swaps that was issued pursuant to the Commission's exemptive authority in CEA section 4(c), and that was in effect on the date of enactment of the Dodd-Frank Act, would continue to be permitted under such terms and conditions as the Commission may prescribe. Such rules, regulations or orders would include part 35 with respect to agricultural swaps and the agricultural basis and calendar swaps noted above, but would not include options entered into pursuant to part 32.[34]

In addition to the provisions in section 723(c)(3), section 733 of the Dodd-Frank Act, new CEA section 5h(b), provides that a SEF may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

*B. Commodity Options*

i. Commodity Options Are Swaps

The Dodd-Frank Act defines the term "swap" to include not only the various types of swaps listed in the definition, including commodity swaps and agricultural swaps, but also options of any kind (other than options on

[23] Part 35 provides eligible swap participants (as defined in § 35.1(b)(2)) with a general exemption from the CEA for a swap that is not part of a fungible class of agreements that are standardized as to their material economic terms, where the creditworthiness of each counterparty is a material consideration in entering into or determining the terms of the swap, and the swap is not entered into and traded on or through a multilateral transaction execution facility. *See* § 35.2.

[24] Part 35, at § 35.2(d), also provides that "any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B) [liability of principal for act of agent]) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes." *See* 17 CFR 35.2(d). The Commission has granted three such exemptions, which have in each instance been styled as exemptive orders pursuant to CEA section 4(c). *See,*

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The-Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 FR 77015, Dec. 18, 2008;

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 74 FR 12316, Mar. 24, 2009; and

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation To Clear Over-the-Counter Wheat Calendar Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983, June 21, 2010.

[25] Options on agricultural commodities are reviewed in detail in the options discussion of this notice.

[26] "Eligible contract participant" is defined in current CEA section 1a(12). Generally speaking, an eligible contract participant is considered to be a sophisticated investor.

[27] A designated contract market is a board of trade designated as a contract market under CEA section 5.

[28] *See* new CEA section 2(e) as added by section 723(a)(2) of the Dodd-Frank Act.

[29] The requirements for SEFs are set forth in new CEA section 5h.

[30] Generally, a commercial end user is described in new CEA section 2(h)(7) as a non-financial entity that is using swaps to hedge or mitigate commercial risk and that notifies the Commission as to how it generally meets its financial obligations associated with entering into non-cleared swaps.

[31] "Swap dealer" is defined in new CEA section 1a(49), as added by section 721(a)(21) of the Dodd-Frank Act. "Major swap participant" is defined in new CEA section 1a(33), as added by section 721(a)(16) of the Dodd-Frank Act.

[32] *See* proposed definition of agricultural commodity at 75 FR 65586, Oct. 26, 2010.

[33] Generally speaking, section 4(c) provides that, in order to grant an exemption, the Commission must determine that: (1) The exemption would be consistent with the public interest and the purposes of the CEA; (2) any agreement, contract, or transaction affected by the exemption would be entered into by "appropriate persons" as defined in section 4(c); and (3) any agreement, contract, or transaction affected by the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

[34] Part 32 was not issued pursuant to the Commission's section 4(c) exemptive authority and thus does not qualify for the Dodd-Frank grandfather provision for existing 4(c) exemptions. *See* section 723(c)(3)(B) of the Dodd-Frank Act.

futures).[35] Even before the Dodd-Frank Act, commodity options have been subject to the Commission's plenary authority under CEA section 4c(b).[36] Based on that general prohibition of any option transactions contrary to any Commission rule, regulation or order prohibiting options, or allowing them under such conditions as the Commission may prescribe, the only options currently authorized under the CEA are those specifically provided for in the Commission's regulations.

ii. Options on Agricultural Commodities; Trade Options

As noted above, the Commission maintains plenary authority over options and has used that authority to, among other things, issue part 32 of the Commission's regulations. Part 32 includes a general ban on commodity options,[37] but allows for commodity option transactions under certain conditions. Part 32 specifically allows for options on agricultural commodities in two instances.[38]

First, rule 32.13 establishes rules for trading bilateral options on the "enumerated" agricultural commodities ("agricultural trade options" or "ATOs") whereby ATOs may only be sold by an Agricultural Trade Option Merchant ("ATOM"), who must first register with the Commission as such pursuant to CFTC rule 3.13. Since its 1998 adoption and one amendment in 1999,[39] the ATOM registration scheme has attracted only one registrant, which registrant has since withdrawn its ATOM registration. Accordingly, ATOs currently may only be transacted pursuant to an exemptive provision found at § 32.13(g)(1). The exemption at § 32.13(g)(1) allows ATOs to be sold when: (1) The option is offered to a commercial ("a producer, processor, or commercial user of, or a merchant handling" the underlying commodity); (2) the commercial enters the transaction solely for purposes related to its business as such; and (3) each party to the option contract has a net worth of not less than $10 million.

In either case (whether transacted pursuant to the ATOM registration scheme or accomplished via the exemption at § 32.13(g)), the phrase "agricultural trade option" refers specifically to a trade option on an agricultural commodity enumerated in § 32.2.

In addition to the ATO rules in § 32.13, part 32 includes, at § 32.4, a basic trade option exemption applicable to options on commodities other than the enumerated agricultural commodities. The terms of the § 32.4 exemption are essentially the same as those of the § 32.13(g) exemption with one significant difference—the § 32.4 trade option exemption does not include any net worth requirement. Under § 32.4, the option must be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity, who enters into the commodity option transaction solely for purposes related to its business as such.

Because the term "agricultural commodity" as used in section 723(c)(3) of the Dodd-Frank Act refers to more than just the enumerated commodities, the Commission recognizes that certain options authorized under § 32.4 (*e.g.* options on coffee, sugar, cocoa, and other agricultural products that do not appear in the enumerated commodity list) would be considered options on an agricultural commodity. As such, and without adopting the rules proposed herein, those options would be swaps on an agricultural commodity and would thereby fall under the Dodd-Frank Act's general prohibition of agricultural swaps.

iii. Remainder of Part 32

In addition to the foregoing provisions regarding § 32.13 agricultural trade options and § 32.4 general trade options, part 32 contains various other provisions that have been rendered obsolete, either by the Dodd-Frank Act, by subsequent Commission rulemaking actions, or by the passage of time. The amendments proposed herein would substantially update and revise part 32 and remove these unnecessary provisions.

iv. Part 33

As noted above, current part 33 applies to both exchange-traded options on futures and exchange-traded options on physical commodities. However, Dodd-Frank exempts only options on futures from the swaps definition. Therefore, options on physical commodities, even if traded on a DCM, are to be regulated as swaps. Accordingly, these proposed rules would remove all references to exchange-traded options on physicals from part 33.

## III. The ANPRM

### *A. General Description of the ANPRM*

On September 28, 2010 (75 FR 59666), the Commission published an advanced notice of proposed rulemaking ("ANPRM") and request for comment on the appropriate conditions, restrictions or protections to be included in any rule, regulation or order of the Commission adopted pursuant to section 4(c) of the Act governing the trading of swaps in an "agricultural commodity,"[40] as defined by the Commission.[41] The Commission requested specific input pertaining to five topics: Current Agricultural Swaps Business (overall size, the types of entities, and any unique characteristics of agricultural swaps that distinguish them from other types of physical commodity swaps); Agricultural Swaps Clearing (the extent to which existing swaps are cleared or uncleared, whether existing swaps would generally qualify for a commercial end-user exemption, and the desirability of a clearing requirement for swaps that do not qualify for such an exemption); Trading (description of any significant trading problems encountered in this market); Agricultural Swaps Purchasers (whether agricultural swaps participants need

[35] *See* new CEA section 1a(47)(B), as added to the CEA by section 721 of the Dodd-Frank Act. *But see also* footnote 6, above, for the list of certain options that are excluded from the swap definition.

[36] Section 4c(b) provides:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets. CEA section 4c(b); 7 U.S.C. 6c(b).

[37] *See* Commission regulation 32.11, 17 CFR 32.11.

[38] Note that part 32 was not issued under the Commission's section 4(c) exemptive authority. After the effective date of the Dodd-Frank Act, options on agricultural commodities will also fall under the Dodd-Frank Act's provisions governing the trading of swaps (and, specifically, agricultural swaps) since options on commodities fall within the Act's definition of a swap. Accordingly, it is important to identify which options on agricultural commodities are currently being traded pursuant to part 32 and, where appropriate, to implement rules to preserve that market (in addition to rules proposed herein that will preserve the majority of the existing non-agricultural trade option market, subject to the same laws and rules as all other swaps).

[39] 63 FR 18821, Apr. 16, 1998; and 64 FR 68011, Dec. 6, 1999, respectively.

[40] The Commission also informally solicited comments on its Web site at *http://www.cftc.gov/LawRegulation/DoddFrankAct/OTC_19_AgSwaps.html.* In addition, Commission staff has met with market participants and other interested parties. A complete list of external meetings held at the Commission may be found on the Commission's Web site at *http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/index.htm.*

[41] The Commission has published for comment a proposed regulatory definition of the term, "agricultural commodity" (*See:* 75 FR 65586, Oct. 26, 2010, and plans to publish a final definition in the near future.

more protections than other physical commodity swaps participants, or whether special provisions are needed to make it easier for producers to participate); Designated Contract Markets (should agricultural swaps be permitted on DCMs to the same extent as other swaps); Swap Execution Facilities (should agricultural swaps be permitted on SEFs to the same extent as other swaps); and Trading Outside of DCMs and SEFs (should agricultural swaps be permitted to trade outside of a DCM or SEF to the same extent as other swaps, and generally should agricultural swaps be treated any differently than other types of physical commodity swaps).

*B. Summary of Comments*

Nineteen formal comment letters representing a broad range of interests, including producers, merchants, swap dealers, commodity funds, futures industry organizations, and academics/think tanks, responded to the ANPRM. In particular, comment letters were received from: The American Farm Bureau Federation, the American Soybean Association, the Commodity Markets Council, the National Association of Wheat Growers, the National Cattlemen's Beef Association, and the National Corn Growers Association, who filed a joint statement (collectively, "the Ag Associations"); the National Grain and Feed Association ("NGFA"); the Commodity Markets Council ("CMC," which filed a separate letter in addition to signing onto the joint statement noted above); the National Milk Producers Federation ("NMPF"); the Dairy Farmers of America ("DFA"); the National Council of Farmer Cooperatives ("NCFC"); the Gavilon Group, LLC ("Gavilon"), a feed manufacturer; Cargill, an agricultural commodities merchant; Allenberg Cotton, a cotton merchant; the Agricultural Commodity Swaps Working Group ("Ag Swap Working Group"), comprised of financial institutions that provide risk management and investment products to agricultural end users; the International Swaps and Derivatives Association ("ISDA"); United States Commodity Funds ("USCF"); the Alternative Investment Management Association, Ltd. ("AIMA"); International Assets Holding Corporation ("IAHC"); Teucrium Trading; the Futures Industry Association ("FIA"); the CME Group, Inc. ("CME"); the Institute for Agriculture and Trade Policy ("IATP"); and Dr. Robert Pollin, a university professor.[42]

The vast majority of commenters supported the equal treatment of agricultural swaps (including trade options) under the same regulatory scheme as other categories of swaps. The following statement from the Ag Associations is representative of this sentiment:

> Ag swaps are used, to varying degrees, by our members because they provide a targeted, customized, cost-effective, and efficient risk management strategy * * * In a world with increasing inherent volatility, the need for risk management instruments has never been greater.
>
> We urge the Commission to treat swaps for *all* commodities harmoniously. We believe the comprehensive regulation of swaps should not be based on distinctions among commodity types. The generally applicable protections under the Dodd-Frank Bill—such as reporting, mandatory clearing, mandatory trading of standardized swaps, minimum capital requirements, and the CFTC's authority to impose position limits, determine which swaps are subject to clearing and trading and to exercise emergency powers—will protect ag swaps from fraud and manipulation.

Two commenters (Dr. Pollin and the IATP) were generally opposed to the trading of agricultural swaps under the same conditions as other physical commodity swaps. Both commenters expressed the belief that speculative investment in agricultural derivatives has increased price volatility, to the detriment of producers and consumers of agricultural products, and that trading in agricultural swaps could potentially exacerbate this problem.

Commenters offered the following specific information and/or individual perspectives on the five topic areas outlined above:

*Current Agricultural Swaps Business.* Regarding the state of the current agricultural swaps business (including trade options), commenters generally noted that agricultural swaps are used to a considerable extent, but they were unable to quantify the overall size of this market. Swap participants include commercial end users (producers, processors and merchants), hedge funds, swap dealers, and financial institutions. Generally, commenters did not believe that the characteristics of agricultural swaps were significantly different from the characteristics of other types of physical commodity swaps.

*Agricultural Swaps Clearing.* According to the commenters, most agricultural swap activity (including trade options) is not cleared (for example, the NCFC estimated that less than one percent of its members' swaps are cleared). Several commenters pointed to the small amount of swaps cleared by DCOs under existing 4(c) exemptions, relative to the presumed size of the market, as evidence of how few swaps are cleared. Commenters representing agricultural producers and merchants indicated that virtually all of their swaps would qualify for the end-user exemption from the mandatory clearing requirement of the Dodd-Frank Act. Furthermore, most commenters suggested that agricultural swaps should be individually scrutinized as to their clearability, rather than subjecting all agricultural swaps to a clearing requirement. (NCFC, for example, observed that, "the low volume, small sizes and odd lots [of many agricultural swaps] would not be attractive for exchanges or clearing houses to offer those specific products." Thus, "if all entities are required to clear agricultural swaps through an exchange or standardize a non-standard transaction (both in terms of quantity and structure), costs would likely increase to a point where the use of swaps as a bona fide hedge/risk management tool would not be available to segments of the agricultural marketplace.") IATP, however, supported mandatory clearing for all agricultural swaps as a means of discouraging producers from participating directly in this market.

*Trading Practices and Issues.* Commenters generally were not aware of any specific problems pertaining to the existing trade in agricultural swaps and most saw no need for additional requirements for trading agricultural swaps relative to other types of swaps. Some commenters did observe that the Commission's existing regulatory requirements governing agricultural trade options in the enumerated agricultural commodities (as distinct from other types of physical commodities) have restricted the development of this market to the detriment of commercial end users (*see,* for example, comments by CMC, Gavilon and DFA).

*Additional Protections for Agricultural Swaps Purchasers.* Most commenters did not believe that agricultural swaps participants need more protection than participants in other types of commodity swaps. Most commenters also believed that the Dodd-Frank Act requirement, limiting swap purchasers to "eligible contract participants" ("ECPs"), is appropriate to apply to the purchasers of agricultural commodity swaps. However, several commenters suggested that transactions within farmer cooperatives (that is,

[42] In addition, two comments were received that did not directly address the ANPRM.

between individual farmer members and their local elevator cooperative, and between affiliated cooperatives at the local, regional or national levels) should not be subject to the ECP requirement (for example, the NCFC states that individual members who do not meet the ECP requirement should be permitted to purchase swaps directly from their producer cooperatives, and the NMPF argues that transactions between members and their cooperatives are internal transactions and should be treated as such, rather than be subject to provisions that govern transactions between unaffiliated parties). In addition, one commenter favored making agricultural trade options (but not other types of swaps) available from registered swap dealers to non-ECPs who enter into them explicitly for commercial risk management purposes (*see* Cargill comment).

*Trading on DCMs and SEFs.* Commenters generally supported the listing and trading of agricultural swaps (including options) on DCMs and SEFs to the same extent as other physical commodity swaps, with the exception of Dr. Pollin and the IATP.

*Trading off of DCMs and SEFs.* Commenters generally expressed the opinion that agricultural swaps (including options) should be permitted to trade outside of DCMs and SEFs under the same conditions that apply to other types of physical commodity swaps (again, with the exception of the IATP and Dr. Pollin). Most commenters did not believe there were any specific agricultural commodities that would require special or different protections. IATP expressed the opinion that "A higher collateral and capital requirement should be applied to any bilateral swaps a CFTC rule would allow." Dr. Pollin argued that there is no good reason for offering any exemptions from the blanket prohibition on agricultural swaps contained in the Dodd-Frank Act.

In addition to comments addressing the five specific topic areas directly related to the ANPRM, several commenters requested that the Commission provide clarity on the treatment of certain types of swap participants and transactions within the overall regulatory scheme for swaps. In this regard, several commenters requested that the Commission clarify that agricultural producer cooperatives that enter into swaps with their own members or third parties in the course of marketing their members' agricultural products should be considered to be end users for purposes of the clearing exception, and further that the Commission should clarify that producer cooperatives are excluded from the definitions of swap dealer and major swap participant (*see,* for example, comments from NGFA, NCFC, NMPF, and DFA). These issues are beyond the scope of this proposed rulemaking. The Commission has issued proposed rules regarding: (1) The end-user exception to mandatory clearing of swaps pursuant to § 723 of the Dodd-Frank Act; [43] and (2) further definition of certain terms regarding market participants, including the terms "swap dealer" and "major swap participant," pursuant to § 712(d) of the Dodd-Frank Act.[44] The Commission encourages all interested parties to submit comments addressing these proposed rules, including responses to the requests for comment set forth therein.

Some commenters also requested that the Commission clarify that certain types of transactions (embedded options in forward contracts [45] and book-outs [46]) fall within the definition of an excluded forward contract rather than the definition of a swap. These issues, too, are beyond the scope of this proposed rulemaking. Commission staff, jointly with staff of the SEC, is also considering further definition of terms regarding certain products, including the term "swap," pursuant to § 712(d) of the Dodd-Frank Act. Any comment addressing the distinction between swaps and forward contracts will be shared with appropriate staff.

## IV. Explanation of the Proposed Rules

### *A. Introduction*

After considering the complete record in this matter, including all comments on the ANPRM, the Commission is proposing the rulemaking contained herein. Broadly speaking, the proposed rules would implement regulations whereby (1) swaps in agricultural commodities, and (2) all commodity options (including options on both agricultural and non-agricultural commodities), other than options on futures, may transact subject to the same rules as all other swaps.

First, the proposal would withdraw existing part 35 of the Commission's regulations—thus withdrawing the provisions originally adopted in 1993 to provide legal certainty for the bilateral swaps market by largely exempting bilateral swaps transactions from CEA regulation.[47] Second, pursuant to the exemptive authority in CEA section 4(c), the proposed rules would adopt a new part 35 to provide the primary authority for transacting swaps in an agricultural commodity ("agricultural swaps") as authorized by Sections 723(c)(3) and 733 of the Dodd-Frank Act. Third, the proposed rulemaking would substantially update and revise the existing framework for off-exchange options in existing part 32. In part pursuant to the exemptive authority in CEA section 4(c) and in part pursuant to the Commission's general rulemaking authority set out at CEA section 8a(5) and the Commission's plenary authority over options, revised part 32 would affirm that all commodity options (other than options on futures) are swaps, and as such will be subject to all provisions of the CEA otherwise applicable to swaps, including any rule, regulation, or order thereunder. The proposed rulemaking would also withdraw rule 3.13, which sets out procedures for the registration of agricultural trade option merchants and their associated persons. Rule 3.13 will become moot upon the withdrawal of rule 32.13, which includes the underlying registration requirement. Finally, the proposed rules would revise part 33 to delete references to exchange-traded options on physical commodities (which will now be regulated as swaps), leaving only exchange-traded options on futures subject to part 33.

### *B. Withdrawal of Current Part 35*

In enacting the Futures Trading Practices Act of 1992 (the "1992 Act"),[48] Congress added section 4(c) to the CEA and authorized the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading

[43] *See:* End User Exception to Mandatory Clearing of Swaps, 75 FR 80747, Dec. 23, 2010 (comment period closes February 22, 2011).

[44] *See:* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 75 FR 80174, Dec. 21, 2010 (joint rulemaking with Securities and Exchange Commission ("SEC"), comment period closes February 22, 2011).

[45] *See:* Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options, Interpretive Statement of the Commission's General Counsel, 50 FR 39656, Sept. 30, 1985, regarding the differences between forward contracts and options.

[46] A book-out is a separate, subsequent agreement whereby two commercial parties to a forward contract, who find themselves in a delivery chain or circle at the same delivery point, can agree to settle (or "book-out") their delivery obligations by exchanging a net payment. *See:* Statutory Interpretation Regarding Forward Transactions, 55 FR 39188, Sept. 25, 1990.

[47] "[Part 35 * * *] exempt[s] swap agreements (as defined herein) meeting specified criteria from regulation under the Commodity Exchange Act (the "Act"). This rule was proposed pursuant to authority recently granted the Commission, a purpose of which is to give the Commission a means of improving the legal certainty of the market for swaps agreements." 58 FR 5587, Jan. 22, 1993.

[48] Public Law 102–546 (Oct. 28, 1992).

requirement of CEA section 4(a), or (with minor exceptions not relevant here) from any other provision of the Act.[49] Pursuant to its new authority in section 4(c), the Commission proposed in 1992 [50] and adopted in 1993 [51] part 35 of the Commission's regulations, generally exempting certain swap agreements from the CEA. As explained above, part 35 originally applied to all commodities. However, certain amendments to the CEA made by the CFMA had the effect of making part 35 relevant only for swaps in agricultural commodities.

The Dodd-Frank Act amends, repeals, or replaces many CEA sections added by the CFMA (including the statutory exemptions for swaps in excluded and exempt commodities at current CEA sections 2(d), 2(g), and 2(h)). To avoid any uncertainty as to whether the Commission will allow bilateral swaps in non-agricultural commodities to revert to reliance on existing part 35 for exemption from the CEA and the Dodd-Frank amendments, the Commission is proposing to revoke current part 35 in its entirety. Once part 35 is revoked, the only swaps authorized under the CEA or the Commission's rules will be those swaps that comport with the requirements of the CEA, as amended by the Dodd-Frank Act.[52]

*C. Proposed New Part 35*

The provisions of proposed new part 35 would generally provide that agricultural swaps may be transacted subject to all provisions of the CEA, and any Commission rule, regulation or order thereunder, that is otherwise applicable to swaps. New part 35 would also clarify that by issuing a rule allowing agricultural swaps to transact subject to the laws and rules applicable to all other swaps, the Commission is allowing agricultural swaps to transact on DCMs, SEFs, or otherwise to the same extent that all other swaps are allowed to trade on DCMs, SEFs, or otherwise.

*D. Revisions to Part 32*

Because commodity options (other than options on futures) clearly fall within the Dodd-Frank Act definition of swap,[53] the Commission is proposing to substantially update and revise the now duplicative off-exchange commodity option regulations set forth in current part 32. Revised part 32, authorized by the Commission's plenary options authority, will provide legal certainty for the commodity options market by making it clear that commodity options (other than options on futures) are authorized to continue subject to all provisions of the CEA, and any rule, regulation, or order thereunder, that is otherwise applicable to swaps.

In order to support the revisions to part 32, including the withdrawal of several sections in their entirety, the Commission reviewed and analyzed each provision of existing part 32, including the corresponding history of the Commission's development of commodity options regulation. Based on its review, the Commission has determined that there would be little practical effect and no detrimental consequences in adopting the proposed revisions to the existing commodity options regime in part 32.

i. 1978 Suspension of Commodity Options (§ 32.11)

From a historical perspective, the Commission adopted its first broad anti-fraud rule applicable to commodity options transactions on June 24, 1975.[54] After an unsuccessful effort to generally permit off-exchange commodity options subject to certain rules and regulations (that is, original part 32),[55] the Commission issued a general suspension of commodity options transactions in 1978.[56] The suspension was adopted by the Commission on April 17, 1978 and was added to the original part 32 as § 32.11.[57] Upon its adoption in 1978, § 32.11 suspended all commodity option transactions (except for those trade options authorized by § 32.4) [58] that had been otherwise authorized by original part 32. Aside from later amendments that authorized commodity options conducted on or subject to the rules of a contract market [59] or a foreign board of trade,[60] current § 32.11 remains in the same form as when originally adopted in 1978. Accordingly, the bulk of original part 32, as discussed below, has been obsolete and/or irrelevant since the adoption of § 32.11 in 1978. This includes the registration requirements in § 32.3, the disclosure requirements in § 32.5, the segregation requirements in § 32.6, and the books and recordkeeping requirements in § 32.7.

ii. Original Part 32 (§§ 32.1–32.10)

Original part 32 was adopted by the Commission on November 24, 1976, and included substantially the same provisions as they exist in current §§ 32.1–32.10.[61]

a. 32.1

The definitions section, § 32.1, has been substantively modified only once [62] since its adoption in 1976. That revision added a *scope* provision as § 32.1(a). The purpose of adding the *scope* provision was to make clear that part 32 applied only to off-exchange bilateral options, and that it would not apply to commodity options conducted on or subject to the rules of a contract market. The § 32.1(a) *scope* provision was amended once in 1987 to also exclude from part 32 commodity options conducted on or subject to the rules of a foreign board of trade.[63] Beyond that, § 32.1 has not been substantively amended since its adoption in 1976.

Because commodity options (other than options on futures) are now swaps and will be authorized to transact subject to the swaps rules, the *scope* provision in § 32.1 has been updated and retained in revised part 32 as appropriate. The proposal would delete the definitions in current § 32.1 as duplicative—the terms therein are already defined elsewhere, either in other Commission regulations or in the CEA, and there is no need for their repetition in part 32.

b. 32.2

As originally adopted, § 32.2(a) prohibited commodity options transactions on a list of enumerated

[49] While section 4(c) was amended by the Dodd-Frank Act, for the purposes of this rulemaking its function and effect have not changed. *See* 4(c) discussion, below.

[50] *See* the original proposal at 57 FR 53627, Nov. 12, 1992. *See also* 57 FR 58423, Dec. 28, 1992, extending the comment period for an additional fourteen days.

[51] 58 FR 5587, Jan. 22, 1993.

[52] Section 723(c)(3)(B) of the Dodd-Frank Act grandfathers existing 4(c) orders that relate to agricultural swaps unless superseded by subsequent Commission order. This notice of proposed rulemaking is not taking any action to alter the continued effectiveness of the orders identified in footnote 24 above. *See also,* 76 FR [ _____ ] n. 38Jan. 20, 2011.

[53] *See* footnote 6 above.

[54] 40 FR 26504, June 24, 1975. Originally designated as 17 CFR 30.01, the provision was re-designated as § 32.9 and incorporated into the original part 32 regulations adopted on November 24, 1976.

[55] *See* discussion and review of original part 32 below.

[56] Exchange-traded options on futures were not affected since they were not available at the time and only later became available when the Commission initiated a pilot program to allow exchange-traded options on futures in 1981. *See* 46 FR 54500, Nov. 3, 1981.

[57] *See* 43 FR 16153, Apr. 17, 1978.

[58] Dealer options, which were also being traded at the time, were also subsequently exempted from the general options ban. *See* 43 FR 23704, June 1, 1978. Dealer options are discussed below in connection with the withdrawal of rule 32.12.

[59] *See* 47 FR at 57016, Dec. 22, 1982.

[60] *See* 52 FR at 29003, Aug. 5, 1987.

[61] *See* 43 FR 51808, Nov. 24, 1976.

[62] *See* 47 FR at 57016, Dec. 22, 1982.

[63] *See* 52 FR at 29003, Aug. 5, 1987.

agricultural commodities and § 32.2(b) prohibited commodity options involving any contract of sale of any commodity for future delivery traded on or subject to the rules of any contract market or involving the prices of such contracts, unless done pursuant to a subsequent Commission rulemaking. Section 32.2 was amended once in 1992 to remove § 32.2(b),[64] and § 32.2 was amended again in 1998 to reference the Commission's newly adopted Agricultural Trade Option rules in § 32.13. Because this proposal would treat agricultural swaps the same as swaps in any other commodity, and because all commodity options (other than options on futures) are now swaps, it is no longer necessary to distinguish between agricultural and non-agricultural commodities for the purposes of the Commission's options regulations, and thus the Commission is proposing to withdraw § 32.2.

c. 32.3, 32.5, 32.6, and 32.7

As adopted in 1976, § 32.3 provided that only firms registered as futures commission merchants, or registered associated persons of such firms, could offer or sell commodity options under part 32. Section 32.5 imposed certain disclosure requirements for options sellers, § 32.6 addressed segregation of funds, and § 32.7 set forth the books and recordkeeping requirements. Because the 1978 suspension of commodity options in § 32.11 remains in effect, the requirements in §§ 32.3, 32.5, 32.6, and 32.7 (the "abandoned sections") are of no practical effect—there are no authorized transactions subject to these abandoned sections. The commodity options that are allowed to transact outside of the § 32.11 suspension (*e.g.,* § 32.4 trade options, § 32.12 dealer options, § 32.13 agricultural trade options, and commodity option transactions conducted on or subject to the rules of a contract market or a foreign board of trade) are each exempted from the requirements of the abandoned sections. Accordingly, the proposal would withdraw §§ 32.3, 32.5, 32.6, and 32.7.

d. 32.4

From its adoption, part 32 has included, in § 32.4, an exemption for commodity options used by commercial entities entering into the commodity option transactions solely for purposes related to their business.[65] The so-called "trade option exemption" has remained unchanged since 1976 and has provided legal certainty for that segment of the commodity options market available to commercial end users. This notice proposes revising the trade option exemption to provide that commodity options may transact subject to the same laws, rules, regulations, and orders otherwise applicable to all swaps. The rationale for the revision is that the swaps rules already allow for the equivalent of a trade option—the Dodd-Frank amendments permit bilateral swaps, where both parties are ECPs,[66] to remain uncleared at the election of a commercial end user. The primary substantive change to this market will be that, while current § 32.4 imposes no minimum net worth requirement on participants, both purchasers and sellers of commodity options under revised § 32.4 will have to qualify as ECPs, just as swaps (other than swaps on a DCM) may only be entered into by ECPs. The Commission is specifically requesting comment as to whether this distinction will significantly affect hedging opportunities available to currently active market participants.

e. 32.8 and 32.9

Sections 32.8 and 32.9 address unlawful representations and fraud in connection with commodity option transactions. These two consumer protection provisions are important to both the Commission and the commodity options markets. Even though commodity options are now swaps, subject to the swaps rules and any anti-fraud or other customer protection rules otherwise applicable to swaps, the Commission views §§ 32.8 and 32.9 as important protections for commodity options participants. With the exception of a minor revision expanding the unlawful representation prohibition of § 32.8(a) to all Commission registrants, §§ 32.8 and 32.9 will be retained in substantially the same form as they currently exist. The retention of §§ 32.8 and 32.9 will not affect the applicability to options of any anti-fraud or other similar rule that is applicable to a swap. That is, §§ 32.8 and 32.9 are being retained in addition to any other protections provided by the general swaps rules.

f. 32.10

Section 32.10 grandfathered commodity options transactions occurring prior to the effective adoption of original part 32. Revised part 32 would update the current text with a similar grandfather provision for existing commodity options transacted pursuant to current part 32. Generally, commodity options transacted pursuant to current part 32 (and prior to the effective date of any revision to current part 32) will remain enforceable upon the adoption of any revision to part 32.

iii. Subsequent Additions to Part 32—§§ 32.12 and 32.13

a. 32.12—Dealer Options

Section 32.12, commonly known as the dealer options exemption, was added to original part 32 on June 1, 1978.[67] The dealer options rules provided an exemption from the Commission's then recently adopted options ban at § 32.11 (recall that the § 32.11 options ban was originally adopted on April 17, 1978).[68] Amended two times shortly after its adoption—once to adjust a net worth requirement[69] and again to include certain reporting requirements[70]—the § 32.12 dealer options rules were intended to grandfather the ongoing businesses of certain commercial option grantors who, as of May 1, 1978, were both in the business of granting options on a physical commodity and in the business of buying, selling, producing, or otherwise utilizing that commodity.

The primary factor in the Commission's determination to withdraw § 32.12 at this time is that the dealer option business has apparently ceased to exist. Since at least September 11, 2001,[71] and likely for at least another decade before that,[72] the Commission has not received a single report required to be filed by an entity transacting dealer options under § 32.12. That observation, in conjunction with

[64] *See* 57 FR 27925, June 23, 1992. At that time, original § 32.2(a) was re-designated as simply § 32.2.

[65] § 32.4(a) exempts a commodity option when it is offered to "a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." *See* § 32.4(a).

[66] *See* footnote 26, above.

[67] *See* 43 FR 23704, June 1, 1978.

[68] *See* 43 FR 16153, Apr. 17, 1978.

[69] *See* 43 FR 47492, Oct. 16, 1978.

[70] *See* 43 FR 52467, Nov. 13, 1978.

[71] September 11, 2001 is, of course, the day that the Commission's hard copy records contained in its New York regional office in the World Trade Center were lost. The records would have included any § 32.12 reports, which were required to be filed with and retained at the Commission's New York regional office in hard copy form.

[72] Interviews of long-serving Commission staff indicate no recollections of entities transacting pursuant to the § 32.12 dealer options exemption for at least the past 20 years. The apparent cessation of the dealer options business should not come as a surprise. It was widely expected at the time that when exchange-traded options became available (which happened starting in 1981) the dealer option business would fade away. It appears that this is, in fact, what happened.

the requirement that to rely on § 32.12 a dealer has to have been in this business as of May 1, 1978, implies that no entity is legally relying on § 32.12 for any currently transacted business activity. The Commission is specifically requesting comment as to whether there is any reason not to withdraw § 32.12 in its entirety, and whether any person, group of persons, or class of transactions is prejudiced or otherwise harmed by such action.

b. 32.13—Agricultural Trade Options

Section 32.13 and agricultural trade options are described in the Background section above. Added to part 32 in 1998,[73] and amended once thereafter,[74] the ATOM registration regime has been largely unused. It has attracted only one registrant, which registrant has since withdrawn its registration. However, the exemption for agricultural trade options meeting certain conditions as specified in § 32.13(g) appears to be widely used. Because the Commission is proposing to authorize agricultural swaps in new part 35, and to re-authorize commodity options to transact as swaps (with no distinction as between agricultural and non-agricultural commodities) in revised § 32.4, the Commission is proposing to withdraw § 32.13 in its entirety.[75] The primary effect of the change would be to remove the $10 million net worth requirement for parties relying on the § 32.13(g) exemption for agricultural trade options. Under revised § 32.4, parties need only qualify as ECPs, which category would include certain persons with a net worth of less than $10 million.

*E. Part 33*

As noted above, the Commission is proposing to amend part 33 to remove references to options on physical commodities. All options on physicals would now be regulated as swaps, leaving only exchange-traded options on futures subject to part 33. Treating options on physicals that are traded on a DCM as swaps would have little practical effect since anyone (including non-ECPs) could continue to trade such instruments on a DCM. In addition, qualified persons (ECPs) could trade similar options on physical commodities in the non-DCM environment, including on SEFs, subject to the same rules as other physical commodity swaps.

[73] *See* 63 FR 18832, Apr. 16, 1998.

[74] *See* 64 FR 68011, Dec. 6, 1999.

[75] In addition, the proposal would withdraw § 3.13 in its entirety. Section 3.13 outlines the registration procedures for ATOMs, and will become be moot upon the withdrawal of § 32.13.

**V. Findings Pursuant to Section 4(c)**

As noted above, section 723(c)(3)(A) of the Dodd-Frank Act prohibits swaps in an agricultural commodity. However, section 723(c)(3)(B) of the Dodd-Frank Act explicitly provides that the Commission may permit swaps in an agricultural commodity pursuant to CEA section 4(c), the Commission's general exemptive authority, "under such terms and conditions as the Commission shall prescribe." Accordingly, certain of the amendments proposed herein are proposed for adoption pursuant to section 4(c), as amended by the Dodd-Frank Act.

Section 4(c)(1) of the CEA authorizes the CFTC to exempt any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) in order to "promote responsible economic or financial innovation and fair competition."[76] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. In enacting section 4(c), Congress noted that the goal of the provision "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."[77]

In order to analyze the effect of permitting agricultural swaps to trade under the same terms and conditions as other swaps, it is appropriate to examine some of the major components of the Dodd-Frank Act that apply to swaps generally. Section 727 of the Dodd-Frank Act adds, among other things, a new CEA section 2(a)(13) that mandates that swap transaction and pricing data be made available to the public. Section 723(a)(3) of the Dodd-Frank Act adds a new CEA section 2(h) that provides that the Commission shall determine which swaps are subject to a mandatory clearing requirement. New CEA section 2(h) also provides that swaps that are required to be cleared must be executed on a DCM or SEF, if a DCM or SEF makes the swap available for trading. As noted above, part 35, as it is currently written, does not permit clearing of agricultural swaps and does not contemplate any reporting of agricultural swaps data.

Permitting agricultural swaps to trade under the same terms and conditions as other swaps should provide greater certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner. Treating all swaps, including agricultural swaps, in a consistent manner should provide greater certainty to markets. The Dodd-Frank Act reporting and trade execution requirements should lead to greater market and price transparency, which may improve market competition, innovation, and development. Centralized clearing of agricultural swaps by robustly regulated central clearinghouses should reduce systemic risk and provide greater certainty and stability to markets by reducing counterparty risk.

The Commission is requesting comment on whether swaps in agricultural commodities should be subject to the same legal requirements as swaps in other commodities.

Section 4(c)(2) of the CEA provides: That the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue; that the exemption is consistent with the public

[76] New section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), as amended by the Dodd-Frank Act, provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that—

(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

(i) with respect to—

(I) paragraphs (2), (3), (4), (5), and (7), paragraph (18)(A)(vii)(III), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), (2)(c)(1)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

(II) section 206(e) of the Gramm-Leach-Bliley Act (Pub. L. 106–102; 15 U.S.C. 78c note); and

(ii) in sections 721(c) and 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commissions determine that the exemption would be consistent with the public interest.

[77] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or Commission-regulated markets to discharge their regulatory or self-regulatory responsibilities under the CEA.[78]

The purposes of the CEA include "ensur[ing] the financial integrity of all transactions subject to this Act and the avoidance of systemic risk" and "promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants."[79] As noted above, centralized clearing of agricultural swaps (which is not permitted under the current part 35 rules) should reduce systemic risk. Also, allowing agricultural swaps to trade under the general swaps rules contained in the Dodd-Frank Act would allow agricultural swaps to trade on SEFs and DCMs (which is prohibited under the current part 35 rules) which may result in increased innovation and competition in the agricultural swaps market. Reducing systemic risk and increasing innovation and competition by permitting agricultural swaps to trade under the same terms and conditions as other swaps would be consistent with the purposes listed above, the general purposes of the CEA, and the public interest. The Commission is requesting comment on this issue.

As noted above, the Dodd-Frank Act contains substantial new clearing and trade execution requirements for swaps. The clearing requirement is designed, among other things, to reduce the counterparty risk of a swap, and therefore systemic risk. The swap reporting and trade execution requirements should provide additional market information to the Commission, the markets, and the public. Thus, treating agricultural swaps in the same manner as other swaps may enhance the ability of the Commission or Commission-regulated markets to discharge their regulatory or self-regulatory responsibilities under the CEA.

Section 4(c)(3) of the CEA includes within the term "appropriate persons" a number of specified categories of persons, and also in subparagraph (K) thereof "such other persons that the Commission determines to be appropriate in light of * * * the applicability of appropriate regulatory protections." Section 723(a)(2) of the Dodd-Frank Act adds, among other things, a new CEA section 2(e) that provides: "It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a [DCM]."[80] In light of the comprehensive new regulatory scheme for swaps and the enhancements made to the already robust regulatory system concerning DCMs[81] that are contained in the Dodd-Frank Act, the limitation on participation to eligible contract participants outside of a DCM, and the ability of others to enter into a swap on a DCM, should limit participation to appropriate persons. The Commission requests comment on this issue.

## VI. Request for Comments Regarding the Proposed Rules

In addition to specifically requesting comment on the foregoing questions related to the issuance of a 4(c) order, and the other questions set out in the preceding sections of this notice of proposed rulemaking, the Commission poses the following questions:

1. Generally, will the rule changes and amendments proposed herein provide an appropriate regulatory framework for the transacting of (a) agricultural swaps, and (b) trade options on all commodities?

2. Does the proposal for new part 35 appropriately address all outstanding issues as they relate to the transaction of swaps in an agricultural commodity?

3. Regarding the proposed revisions to part 32, and specifically the revised § 32.4 trade option exemption, will such revisions significantly affect hedging opportunities available to currently active users of the trade options market? In other words, is there any reason not to revise § 32.4 as proposed? In particular, are there persons who offer or purchase trade options on non-enumerated agricultural commodities (*e.g.,* coffee, sugar, cocoa) under current § 32.4 who would not qualify as ECPs and would therefore be ineligible to participate in such options under revised § 32.4? If so, should such participants be excepted from the general requirement that all swaps participants must be ECPs unless the transaction takes place on a DCM?

4. Regarding the proposed withdrawal of § 32.12 in its entirety, would such action (in conjunction with the adoption of the new rules proposed herein) prejudice or otherwise harm any person, group of persons, or class of transactions? In other words, is there any reason not to withdraw § 32.12 as proposed?

5. Similarly, and regarding the proposed withdrawal of § 32.13 (the agricultural trade option provision) in its entirety, would such action (in conjunction with the adoption of the new rules proposed herein) prejudice or otherwise harm any person, group of persons, or class of transactions? In other words, is there any reason not to withdraw § 32.13 as proposed?

6. Do the proposals as they relate to part 33 appropriately limit the scope of part 33 to DCM-traded options on futures, leaving DCM-traded options on physical commodities subject to part 32?

7. Do the proposals outlined herein omit or fail to appropriately consider any other areas of concern regarding agricultural swaps and options in any commodity?

## VII. Related Matters

### *A. Cost Benefit Analysis*

Section 15(a) of the CEA[82] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of the rulemaking or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The

[78] Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) The agreement, contract, or transaction—

(i) Will be entered into solely between appropriate persons; and

(ii) Will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[79] CEA section 3(b), (7 U.S.C. 5(b)).

[80] New CEA section 2(e), (7 U.S.C. 2(e)).

[81] *See, for example,* new CEA section 5(d) (7 U.S.C. 7(d)) as added by section 735(b) of the Dodd-Frank Act and amended CEA section 5c (7 U.S.C. 7a–2) as amended by section 745 of the Dodd-Frank Act.

[82] 7 U.S.C. 19(a).

Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

*i. Summary of proposed requirements.* The proposed rule would replace the swap exemption in part 35 and the commodity options provisions in part 32 with new rules providing, in general, that agricultural swaps and options (other than options on futures) would be treated the same as all other swaps. The proposed rule would also amend part 33 to remove references to options on physical commodities. While the proposed rule does not contain the substantive requirements that govern swaps generally (those requirements are found in the swaps-related rulemakings that implement the Dodd-Frank Act), for purposes of this analysis, it is appropriate to consider the costs and benefits of treating agricultural swaps and options as all other swaps are treated.

*ii. Costs.* With respect to costs, the Commission has determined that allowing agricultural swaps to continue to trade under the requirements of the current part 35 would result in substantial costs. The Dodd-Frank Act added numerous provisions to the CEA to protect market participants and the public, such as the segregation of funds for uncleared swaps, swap dealer registration and regulation, including business conduct standards, and limitations on conflicts of interest. Current part 35 exempts qualifying swaps from nearly all sections of the CEA, so that these and other protections contained in Dodd-Frank would not apply to agricultural swaps entered into under part 35.

The Dodd-Frank Act contains numerous provisions designed to improve price discovery and foster sound risk management practices, such as the provisions encouraging the clearing of swaps and trading of swaps on DCMs and SEFs. Current part 35, by its terms, would not allow for the clearing or trade execution provisions contained in Dodd-Frank.

Other alternatives to current part 35 could include writing a new part that made agricultural swaps subject to some of the provisions contained in the Dodd-Frank Act, but not other provisions, or accepting all of the provisions of Dodd-Frank and adding additional requirements. The costs of either of these alternatives (and of retaining current part 35, as well) would be to the efficiency of markets, of swap participants, and of the Commission. Since many users of agricultural swaps would likely engage in other types of swaps also, those users would be subject to two regulatory regimes and the compliance costs that would accompany following both regimes. Moreover, the Commission would be required to develop and implement two regimes. Also, several of those who commented regarding the ANPRM noted that the new Dodd-Frank Act regulatory regime is robust and comprehensive and provides significant protections to market participants, so that any concerns regarding agricultural swaps that may have existed under the provisions of the CFMA should be allayed. Several commenters noted that agricultural swaps are important risk management tools and that such swaps should be available on the same terms and conditions as other swaps that are used to manage risk.

With respect to options generally, the Commission has determined that retaining the current parts 32 and 33 would have substantial costs. As noted above, new CEA § 1a(47) defines swaps to include options, other than options on futures. The options rules contained in part 32 are a confusing tangle of largely obsolete rules and, even more important, the general option rules in parts 32 and 33 do not conform to the requirements in the Dodd-Frank Act.

*iii. Benefits.* With respect to benefits, the Commission has determined that replacing parts 32 and 35 with rules that allow agricultural swaps and options to trade under the same terms and conditions as other swaps and amending part 33 to delete references to options on physical commodities will have substantial benefits.

Treating agricultural swaps the same as other swaps would subject those swaps to the numerous provisions in the Dodd-Frank Act that protect market participants and the public, such as the segregation of funds for uncleared swaps, limitations on conflicts of interest, and swap dealer registration and regulation, including business conduct standards. Moreover, the clearing requirement in the Dodd-Frank Act is intended to reduce systemic risk which should further protect the public.

The provisions in the Dodd-Frank Act encouraging the clearing of swaps and trading of swaps on DCMs and SEFs should improve price discovery and foster sound risk management practices. The current provisions of part 35 do not permit such clearing or trade execution.

The Dodd-Frank Act mandates that swap transaction and pricing data be made available to the public. The reporting and trade execution requirements should lead to greater market and price transparency. Also, having a single set of regulations governing all swap transactions should improve efficiency and compliance costs for markets and market participants.

With respect to options generally, the Commission has determined that replacing part 32 and allowing options (other than options on futures) to trade in the same manner as other swaps will have substantial benefits similar to those for agricultural swaps discussed above. Moreover, the current part 32 is outdated and largely obsolete under its own terms. Finally, the current language of parts 32 and 33 regarding options generally does not comply with the swap provisions of the Dodd-Frank Act and must be replaced.

*iv. Conclusion.* After considering the section 15(a) factors, the Commission has determined that the benefits of the proposed parts 32 and 35, and the amendments to part 33, outweigh the costs. Accordingly, the Commission has determined to propose parts 32 and 35, and the amendments to part 33. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

*B. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[83] The proposed rule, in replacing part 35, would affect eligible swap participants ("ESPs") (by eliminating the ESP category and requiring agricultural swap participants to be eligible contract participants ("ECPs"), unless the transaction occurs on a designated contract market ("DCM")). Regarding options, the proposed rule, in amending part 33, would affect entities that currently engage in options on physical commodities on a DCM, and, in replacing part 32, would affect those entities that currently engage in options under § 32.4 and § 32.13(g). By mandating that agricultural swaps and options be treated as all other swaps, the effect of the proposed rule has the potential to affect DCMs, derivatives

[83] 5 U.S.C. 601 *et seq.*

clearing organizations ("DCOs"), futures commission merchants ("FCMs"), large traders and ECPs, as well as swap dealers ("SDs"), major swap participants ("MSPs"), commodity pool operators ("CPOs"), swap execution facilities ("SEFs"), and swap data repositories ("SDRs").

*i. DCMs, DCOs, FCMs, CPOs, large traders, ECPs, and ESPs.* The Commission has previously determined that DCMs, DCOs, FCMs, CPOs, large traders, ECPs, and ESPs are not small entities for purposes of the Regulatory Flexibility Act.[84] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities with respect to these entities.

*ii. SDs, MSPs, SEFs, and SDRs.* SDs, MSPs, SEFs, and SDRs are new categories of registrant under the Dodd-Frank Act. Therefore, the Commission has not previously addressed the question of whether SDs, MSPs, SEFs, and SDRs are, in fact, "small entities" for purposes of the RFA. For the reasons that follow, the Commission is hereby determining that none of these entities would be small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, with respect to SDs, MSPs, SEFs, and SDRs, will not have a significant impact on a substantial number of small entities.

a. *SDs:* As noted above, the Commission previously has determined that FCMs are not small entities for the purpose of the RFA based upon, among other things, the requirements that FCMs meet certain minimum financial requirements that enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[85] SDs similarly will be subject to minimum capital and margin requirements, and are expected to comprise the largest global financial firms. Entities that engage in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers will be exempted from designation as an SD. For purposes of the RFA in this proposed rulemaking, the Commission is hereby determining that SDs not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.

b. *MSPs:* The Commission also has determined that large traders are not small entities for the purpose of the RFA.[86] The Commission considered the size of a trader's position to be the only appropriate test for purposes of large trader reporting.[87] MSPs, among other things, maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. For purposes of the RFA, the Commission is hereby determining that MSPs not be considered to be "small entities" for essentially the same reasons that large traders have previously been determined not to be small entities.

c. *SEFs:* The Dodd-Frank Act defines a SEF to mean a trading system or platform in which multiple participants have the ability to accept bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that facilitates the execution of swaps between persons and is not a DCM. The Commission previously determined that a DCM is not a small entity because, among other things, it may only be designated when it meets specific criteria, including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs. Likewise, the Commission will register an entity as a SEF only after it has met specific criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program. Accordingly, as with DCMs, the Commission is hereby determining that SEFs are not "small entities" for purposes of the RFA.

d. *SDRs:* The Commission previously determined DCMs and DCOs not to be small entities because of "the central role" they play in "the regulatory scheme concerning futures trading."[88] Because of the "importance of futures trading in the national economy," to be designated as a contract market or registered as a DCO, the respective entity must meet stringent requirements set forth in the CEA.[89] Similarly, swap transactions that are reported and disseminated by SDRs are an important part of the national economy. SDRs will receive data from market participants and will be obligated to facilitate swaps execution by reporting real-time data.[90] Similar to DCOs and DCMs, SDRs will play a central role both in the regulatory scheme covering swaps trading and in the overall market for swap transactions. Additionally, the Dodd-Frank Act allows DCOs to register as SDRs. Accordingly, for essentially the same reasons that DCOs and DCMs have previously been determined not to be small entities, the Commission is hereby determining that SDRs are not "small entities" for purposes of the RFA.

*iii. Entities Eligible to Engage in Options on Physical Commodities on DCMs under Part 33.* Under the current part 33, there is no regulatory financial threshold that must be met in order to engage in options on physical commodities on a DCM, so small entities would be eligible to engage in such transactions. In fact, there is no regulatory financial threshold that must be met in order to engage in any type of transaction on a DCM. As noted above, new CEA section 1a(47) provides that options are swaps, other than options on futures. New CEA section 2(e) provides that non-ECPs may enter into swaps, if the swaps are effected on a DCM. Therefore, even though an option on a physical commodity is defined to be a swap under the Dodd-Frank Act, small entities will continue to be eligible to enter into such options on a DCM under the rules proposed herein, just as they are eligible to enter into such options on a DCM under the current part 33. Thus, the rule will have no effect on the eligibility of small entities to enter into an option on a physical commodity on a DCM. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities with respect to entities eligible to engage in options on physical commodities on DCMs under part 33.

*iv. Entities Engaged in Options under § 32.13(g).* The Commission has not previously addressed the question of whether entities engaged in agricultural trade options under § 32.13(g) are, in fact, "small entities" for purposes of the RFA. For the reasoning that follows, the Commission is hereby determining that entities engaged in options under § 32.13(g) would not be small entities.

As noted above, the Commission previously has determined that ECPs are

[84] *See,* respectively and as indicated, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, CPOs, FCMs, and large traders); 66 FR 45604, at 45609, Aug. 29, 2001 (DCOs); 66 FR 20740, 20743, Apr. 25, 2001 (ECPs); and 57 FR 53627, 53630, Nov. 12, 1992 and 58 FR 5587, 5593, Jan. 22, 1993 (ESPs).

[85] 47 FR, at 18619.

[86] *Id.* at 18620.

[87] *Id.*

[88] 47 FR at 18619 (DCMs) and 66 FR at 45609 (DCOs).

[89] *See* new CEA section 5(d), as added by section 735(b) of the Dodd-Frank Act regarding DCM core principles and new CEA section 5b(c)(2), as added by section 725(c) of the Dodd-Frank Act regarding DCO core principles.

[90] *See* new CEA section 21, as added by section 728 of the Dodd-Frank Act.

not small entities for the purpose of the RFA based upon, among other things, the financial and institutional requirements contained in the definition. Also as noted above, the exemption at § 32.13(g) allows for options on the enumerated agricultural commodities to be sold when: (1) The option is offered to a commercial ("a producer, processor, or commercial user of, or a merchant handling" the underlying commodity); (2) the commercial enters the transaction solely for purposes related to its business as such; and (3) each party to the option contract has a net worth of not less than $10 million. There are two analogous provisions in the ECP definition, new CEA sections 1a(18)(A)(v)(III) and 1a(18)(A)(xi)(II). New CEA section 1a(18)(A)(v)(III) provides that an ECP includes a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding $1,000,000 and enters into a swap in connection with the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business. New CEA section 1a(18)(A)(xi)(II) provides that an ECP includes an individual who has assets invested on a discretionary basis, the aggregate of which is in excess of $5,000,000 and who enters the swap in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual. The participation requirements of § 32.13(g)(1) are similar to, if not more restrictive than, the analogous ECP provisions.

For purposes of the RFA in this proposed rulemaking, the Commission is hereby determining that entities engaged in options under § 32.13(g) not be considered to be "small entities" for essentially the same reasons that ECPs have previously been determined not to be small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, with respect to entities engaged in options under § 32.13(g), will not have a significant impact on a substantial number of small entities.

*v. Entities Engaged in Options under § 32.4.* The Commission has not previously addressed the question of whether entities engaged in trade options under § 32.4 are, in fact, "small entities" for purposes of the RFA. As noted above, under § 32.4, an option must be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity, who enters into the commodity option transaction solely for purposes related to its business as such. The § 32.4 trade option exemption does not include any net worth requirement.

Because there is no net worth requirement in § 32.4, thus allowing commercial entities of any economic status to effect option transactions, the Commission is not in a position to determine whether entities engaged in options under § 32.4 include a substantial number of small entities on which the proposed rule would have a significant economic impact. Therefore, the Commission offers, pursuant to 5 U.S.C. 603, the following initial regulatory flexibility analysis, which it shall transmit to the Chief Counsel for Advocacy of the Small Business Administration as § 603 requires:

- *A description of the reasons why action by the agency is being considered.* The Commission is taking this regulatory action to withdraw § 32.4 because the Dodd-Frank Act has defined the term "swap" to include options. This new definition renders § 32.4 obsolete in its current form.
- *A succinct statement of the objectives of, and legal basis for, the proposed rule.* The objective of the withdrawal of § 32.4 is to make the Commission's regulations comport with the CEA as revised by the Dodd-Frank Act. As stated previously, the legal basis for the proposed withdrawal is the new CEA definition of swap, new section 1a(47)(A)(i), and the agricultural swaps provisions in section 723(c)(3) of the Dodd-Frank Act.
- *A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.* The small entities to which the proposed withdrawal of § 32.4 may apply are those commercial small entities that would be smaller than an ECP and additionally would have annual receipts of less than $750,000, the threshold for the definition of small entity in the RFA.[91] Because there are no reporting or registration requirements in § 32.4, it is difficult to quantify the exact number of small entities, if any, to which the proposed rule may apply.
- *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.* The proposed withdrawal of § 32.4 does not contain any reporting, recordkeeping, or other compliance requirements. However, because the Dodd-Frank Act provides that options are swaps, the swaps rules being promulgated under the Dodd-Frank Act in other rulemakings will contain reporting, recordkeeping, and other compliance requirements. However, the withdrawal of 32.4 and the application of the Dodd-Frank Act swaps rules will limit option transactions to eligible contract participants, which have been determined not to be small entities. Therefore, any entity that is not an ECP will be unable to enter into option transactions except on a DCM. Thus, there will be no reporting, recordkeeping or compliance requirements applicable to any small entity.
- *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.* Small entities that do not qualify as ECPs will be unable to engage in options transactions except on a DCM under an existing regulatory scheme. Accordingly, there will be no rules applicable to them that could duplicate, overlap, or conflict with any other Federal rules.
- *Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.* These may include, for example, (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

A potential alternative to limiting trade options under § 32.4 to ECPs would be to create a special rule to allow non-ECPs to engage in such transactions. However, the vast majority of commenters responding to the ANPRM, including both agricultural and non-agricultural interests,[92] supported treating agricultural swaps the same as other swaps, which would entail limiting participation in trade options (other than options on a DCM) to ECPs.

Given these facts, the Commission has determined to treat all trade options in the same manner as any other swap and

[91] 5 U.S.C. 601(6).

[92] *See* summary of comments at III B above.

thus limit participation to ECPs, unless the swap is transacted on a DCM.

*C. Paperwork Reduction Act*

Under the Paperwork Reduction Act (PRA),[93] 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 control number from the Office of Management and Budget (OMB). The Commission believes that these proposed rules will not impose any new information collection requirements that require approval of OMB under the PRA. The Commission notes that these proposed rules will involve the withdrawal of certain provisions related to Commission forms, and will ultimately result in the expiration, cancellation, or removal of such forms.[94] Because the proposals would ultimately result in removing or deleting form filing and/or recordkeeping burdens, it will not result in the creation of any new information collection subject to OMB review or approval under the PRA.

As a general matter, these proposed rules would allow agricultural swaps and options to trade under the same terms and conditions as all other swaps and these proposed rules do not, by themselves, impose any new information collection requirements. Collections of information that may be associated with engaging in agricultural swaps or options are, or will be, addressed within each of the general swap-related rulemakings implementing the Dodd-Frank Act. The Commission invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

**VIII. Proposed Rules**

**List of Subjects**

*17 CFR Part 3*

Administrative practice and procedure, Brokers, Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 32*

Commodity futures, Consumer protection, Fraud, Reporting and recordkeeping requirements.

*17 CFR Part 33*

Commodity futures, Consumer protection, Fraud, Reporting and recordkeeping requirements.

*17 CFR Part 35*

Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Act, as indicated herein, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 3—REGISTRATION

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

**Authority:** 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

**§ 3.13 [Removed and Reserved]**

2. Remove and reserve § 3.13.

3. Revise part 32 to read as follows:

## PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Sec.
32.1 Scope.
32.2 [Reserved.]
32.3 [Reserved.]
32.4 Commodity option transactions; general authorization.
32.5 [Reserved.]
32.6 [Reserved.]
32.7 [Reserved.]
32.8 Unlawful representations; execution of orders.
32.9 Fraud in connection with commodity option transactions.
32.10 Option transactions entered into prior to the effective date of this part.
32.11 [Reserved.]
32.12 [Reserved.]
32.13 [Reserved.]

**Authority:** 7 U.S.C. 1a, 2 note, 6c(b), and 6(c), unless otherwise noted.

**§ 32.1 Scope.**

The provisions of this part shall apply to all commodity option transactions, except for commodity option transactions on a contract of sale of a commodity for future delivery conducted or executed on or subject to the rules of either a designated contract market or a foreign board of trade.

**§ 32.2 [Reserved]**

**§ 32.3 [Reserved]**

**§ 32.4 Commodity option transactions; general authorization.**

Subject to the provisions of this part, any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, subject to all provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap.

**§ 32.5 [Reserved]**

**§ 32.6 [Reserved]**

**§ 32.7 [Reserved]**

**§ 32.8 Unlawful representations; execution of orders.**

It shall be unlawful for:

(a) Any person required to be registered with the Commission in accordance with the Act expressly or impliedly to represent that the Commission, by declaring effective the registration of such person or otherwise, has directly or indirectly approved such person, or any commodity option transaction solicited or accepted by such person;

(b) Any person in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction expressly or impliedly to represent that compliance with the provisions of this part constitutes a guarantee of the fulfillment of the commodity option transaction;

(c) Any person, upon receipt of an order for a commodity option transaction, unreasonably to fail to secure prompt execution of such order.

**§ 32.9 Fraud in connection with commodity option transactions.**

It shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) To deceive or attempt to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

**§ 32.10 Option transactions entered into prior to [effective date of final rule].**

Nothing contained in this part shall be construed to affect any lawful activities that occurred prior to [effective date of final rule].

[93] 44 U.S.C. 3501 *et seq.*

[94] The affected forms include any forms that relate to the agricultural trade option rules in current 17 CFR 32.13 and the dealer option rules in current 17 CFR 32.12.

**§ 32.11 [Reserved]**

**§ 32.12 [Reserved]**

**§ 32.13 [Reserved]**

## PART 33—REGULATION OF COMMODITY OPTION TRANSACTIONS THAT ARE OPTIONS ON CONTRACTS OF SALE OF A COMMODITY FOR FUTURE DELIVERY

4. The authority citation for part 33 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

5. Revise the part heading to read as set forth above.

6. In § 33.2, revise paragraph (b) to read as follows:

**§ 33.2 Applicability of Act and rules; scope of part 33.**

* * * * *

(b) The provisions of this part apply to commodity option transactions that are options on contracts of sale of a commodity for future delivery except for commodity option transactions that are options on contracts of sale of a commodity for future delivery conducted or executed on or subject to the rules of a foreign board of trade.

* * * * *

**§ 33.4 [Amended]**

7. Amend § 33.4 as follows:

a. Remove the words "or for options on physicals in any commodity regulated under the Act," in the introductory text;

b. Remove and reserve paragraph (a)(4);

c. Remove and reserve paragraph (a)(5)(iv);

d. Remove the words "or underlying physical" from paragraph (b)(1)(iii); and

e. Remove the words ", options on physicals," from paragraph (d)(3).

8. Amend § 33.7 as follows:

a. Revise the second paragraph of the Options Disclosure Statement in paragraph (b) introductory text;

b. Remove the phrase "or underlying physical commodity" from paragraph (b)(1) each time it appears;

c. Remove the phrase "(*e.g.,* commitment to sell the physical)" from paragraph (b)(1) the first time it appears;

d. Designate the undesignated paragraphs following paragraph (b)(1) as paragraphs (b)(1)(i), (ii), (iii), (iv), and (v), and revise newly designated paragraph (b)(1)(v);

e. Remove the phrase "or physical commodity" from paragraph (b)(2) introductory text and from paragraph (b)(2)(i);

f. Designate the undesignated paragraphs following paragraph (b)(3) as paragraphs (b)(3)(i), (ii), and (iii);

g. Designate paragraph (b)(4) as paragraph (b)(4)(i) and the undesignated paragraph that follows as paragraph (b)(4)(ii);

h. Designate paragraph (b)(5) as paragraph (b)(5)(i) and the undesignated paragraph that follows as paragraph (b)(5)(ii), and remove the phrase "or underlying physical commodity" from newly designated paragraph (b)(5)(i) both times it appears;

i. Revise newly designated paragraph (b)(5)(ii);

j. Remove the phrase "or underlying physical commodity" from paragraph (b)(6);

k. Remove the phrase "or the physical commodity" and the phrase "or underlying physical commodity" from paragraph (b)(7)(ii);

l. Remove and reserve paragraph (b)(7)(iv);

m. Remove the phrase "or underlying physical commodity" from paragraph (b)(7)(v); and

n. Remove the phrase "or underlying physical commodity" from paragraph (b)(7)(x).

The revisions read as follows:

**§ 33.7 Disclosure.**

* * * * *

(b) * * *

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW THAT THE OPTION IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN "OPTION ON A FUTURES CONTRACT").

* * * * *

(1) * * *

(v) The grantor of a put option on a futures contract who has a short position in the underlying futures contract is subject to the full risk of a rise in the price in the underlying position reduced by the premium received for granting the put. In exchange for the premium received for granting a put option on a futures contract, the option grantor gives up all of the potential gain resulting from a decrease in the price of the underlying futures contract below the option strike price upon exercise or expiration of the option.

(5) * * *

(ii) Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised.

* * * * *

9. Revise part 35 to read as follows:

## PART 35—SWAPS IN AN AGRICULTURAL COMMODITY (AGRICULTURAL SWAPS)

**Authority:** 7 U.S.C. 2 note, 6c(b), and 6(c), unless otherwise noted.

**§ 35.1 Agricultural swaps, generally.**

(a) Any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a swap in an agricultural commodity subject to all provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap; and

(b) In addition to paragraph (a) of this section, any transaction in interstate commerce that is a swap in an agricultural commodity may be transacted on a swap execution facility, designated contract market, or otherwise in accordance with all provisions of the Act, including any Commission rule, regulation, or order thereunder, applicable to any other swap eligible to be transacted on a swap execution facility, designated contract market, or otherwise.

Issued in Washington, DC on January 20, 2011 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

### Appendices to Commodity Options and Agricultural Swaps—Commission Voting Summary and Statements of Commissioners

**Note:** The following appendices will not appear in the Code of Federal Regulations.

### Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

### Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking to authorize agricultural swap and commodity option transactions and subject them to the same rules applicable to all other swaps. The Dodd-Frank Act prohibits such transactions if the Commission does not specifically authorize them. The Commission was informed on this proposal by the public comments received in response to an advanced notice of proposed rulemaking published in September of last year that addressed agricultural swaps. Those comments overwhelmingly supported treating agricultural swaps similarly to the treatment of other swaps brought under

regulation by the Dodd-Frank Act. Agricultural producers, packers, processers and handlers will benefit from the ability to use agricultural swaps to hedge their risk and also will benefit from the transparency brought forth under the Dodd-Frank Act. I believe this proposed rulemaking provides an appropriate regulatory framework for the transaction of agricultural swaps and commodity options, and I look forward to hearing the public's views on this matter.

[FR Doc. 2011–1685 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229, 239 and 249

**[Release Nos. 33–9179; 34–63794; File No. S7–41–10]**

**RIN 3235–AK83**

### Mine Safety Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Securities and Exchange Commission is extending the comment period for a release proposing amendments to its rules to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [Release No. 33–9164; 75 FR 80374 (December 22, 2010)]. The original comment period for Release No. 33–9164 is scheduled to end on January 31, 2011. The Commission is extending the time period in which to provide the Commission with comments on that release for 30 days until Wednesday, March 2, 2011. This action will allow interested persons additional time to analyze the issues and prepare their comments.

**DATES:** Comments should be received on or before March 2, 2011.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–41–10 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–41–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Zepralka, Senior Special Counsel, or Jennifer Riegel, Attorney-Advisor, Division of Corporation Finance at (202) 551–3300, at the U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission has requested comment on a release proposing amendments to its rules to implement Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). Section 1503(a) of the Act requires issuers that are operators, or that have a subsidiary that is an operator, of a coal or other mine to disclose in their periodic reports filed with the Commission information regarding specified health and safety violations, orders and citations, related assessments and legal actions, and mining-related fatalities. Section 1503(b) of the Act mandates the filing of a Form 8–K disclosing the receipt of certain orders and notices from the Mine Safety and Health Administration. The disclosure requirements set forth in the Act are currently in effect,[1] but the Commission is proposing to amend its rules to implement and specify the scope and application of the disclosure requirements set forth in the Act and to require a limited amount of additional disclosure to provide context for certain items required by the Act. This release was published in the **Federal Register** on December 22, 2010.

The Commission originally requested that comments on the release be received by January 31, 2011. The nature of the proposed disclosure requirements differs from the disclosure traditionally required by the Securities Exchange Act of 1934, and the proposal requested comment on a variety of significant aspects of the proposed rules. The Commission has received requests for an extension of time for public comment on the proposal to, among other things, allow for the collection of information and improve the quality of responses.[2] The Commission believes that providing the public additional time to consider thoroughly the matters addressed by the release and to submit comprehensive comments to the release would benefit the Commission in its consideration of final rules. Therefore, the Commission is extending the comment period for Release No. 33–9164 "Mine Safety Disclosure" for 30 days, to Wednesday, March 2, 2011.

By the Commission.

Dated: January 28, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2373 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229 and 249

**[Release No. 34–63793; File No. S7–40–10]**

**RIN 3235–AK84**

### Conflict Minerals

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Securities and Exchange Commission is extending the comment period for a release proposing amendments to its rules to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [Release No. 34–63547; 75 FR 80948 (December 23, 2010)]. The original comment period for Release No. 34–63547 is scheduled to end on January 31, 2011. The Commission is extending the time period in which to provide the Commission with comments on that release for 30 days until Wednesday, March 2, 2011. This action will allow interested persons additional

[1] *See* Section 1503(f) of the Act.

[2] *See, e.g.,* National Mining Association (January 3, 2011); National Stone, Sand & Gravel Association (January 13, 2011); and World Gold Council (January 7, 2011). Comments are available on the Commission's Internet Web site at *http://www.sec.gov/comments/s7-41-10/s74110.shtml.*

time to analyze the issues and prepare their comments.

**DATES:** Comments should be received on or before March 2, 2011.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–40–10 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–40–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** John Fieldsend, Special Counsel in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, at the U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

**SUPPLEMENTARY INFORMATION:** The Commission has requested comment on a release proposing amendments to its rules to implement Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rules would affect the annual reporting requirements of issuers that file reports pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and would require any such issuer for which conflict minerals are necessary to the functionality or production of a product manufactured, or contracted to be manufactured, by that issuer to disclose in the body of its annual report whether its conflict minerals originated in the Democratic Republic of the Congo or an adjoining country. If so, that issuer would be required to furnish a separate report as an exhibit to its annual report that includes, among other matters, a description of the measures taken by the issuer to exercise due diligence on the source and chain of custody of its conflict minerals. These due diligence measures would include, but would not be limited to, an independent private sector audit of the issuer's report conducted in accordance with standards established by the Comptroller General of the United States. Further, any issuer furnishing such a report would be required, in that report, to certify that it obtained an independent private sector audit of its report, provide the audit report, and make its reports available to the public on its Internet Web site. The release was published in the **Federal Register** on December 23, 2010.

The Commission originally requested that comments on the release be received by January 31, 2011. The nature of the proposed disclosure requirements differs from the disclosure traditionally required by the Exchange Act, and the proposal requested comment on a variety of significant aspects of the proposed rules. The Commission has received requests for an extension of time for public comment on the proposal to, among other things, allow for the collection of information and improve the quality of responses.[1] The Commission believes that providing the public additional time to consider thoroughly the matters addressed by the release and to submit comprehensive responses to the release would benefit the Commission in its consideration of final rules. Therefore, the Commission is extending the comment period for Release No. 34–63547 "Conflict Minerals" for 30 days, to Wednesday, March 2, 2011.

By the Commission.

Dated: January 28, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2374 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] *See, e.g.,* Advanced Medical Technology Association *et al.* (Dec. 16, 2010); Representative Spencer Bachus, Chairman, Committee on Financial Services, U.S. House of Representatives (Jan. 25, 2011); Department of State (Jan. 25, 2011); Jewelers Vigilance Committee *et al.* (Jan. 10, 2011); National Mining Association (Jan. 3, 2011); National Stone, Sand Gravel Association (Jan. 13, 2011); and World Gold Council (Jan. 7, 2011). Comments are available on the Commission's Internet Web site at *http://www.sec.gov/comments/s7-40-10/s74010.shtml.*

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229 and 249

**[Release No. 34–63795; File No. S7–42–10]**

**RIN 3235–AK85**

### Disclosure of Payments by Resource Extraction Issuers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Securities and Exchange Commission is extending the comment period for a release proposing amendments to its rules pursuant to Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [Release No. 34–63549; 75 FR 80977 (December 23, 2010)]. The original comment period for Release 34–63549 is scheduled to end on January 31, 2011. The Commission is extending the time period in which to provide the Commission with comments on that release for 30 days until Wednesday, March 2, 2011. This action will allow interested persons additional time to analyze the issues and prepare their comments.

**DATES:** Comments should be received on or before March 2, 2011.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–42–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–42–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and

printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Tamara Brightwell, Senior Special Counsel, Division of Corporation Finance, or Elliot Staffin, Special Counsel in the Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3290, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission has requested comment on a release proposing amendments to its rules to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1504 added Section 13(q) to the Securities Exchange Act of 1934, which requires the Commission to issue rules requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals. Section 13(q) requires a resource extraction issuer to provide information about the type and total amount of payments made for each project related to the commercial development of oil, natural gas, or minerals, and the type and total amount of payments made to each government. In addition, Section 13(q) requires a resource extraction issuer to provide certain information regarding those payments in an interactive data format, as specified by the Commission. This release was published in the **Federal Register** on December 23, 2010.

The Commission originally requested that comments on the release be received by January 31, 2011. The nature of the proposed disclosure requirements differs from the disclosure traditionally required by the Exchange Act, and the proposal requested comment on a variety of significant aspects of the proposed rules. The Commission has received requests for an extension of time for public comment on the proposal to, among other things, allow for the collection of information and to improve the quality of responses.[1] The Commission believes that providing the public additional time to consider thoroughly the matters addressed by the release and to submit comprehensive responses to the release would benefit the Commission in its consideration of final rules. Therefore, the Commission is extending the comment period for Release No. 34–63549 "Disclosure of Payments by Resource Extraction Issuers" for 30 days, to Wednesday, March 2, 2011.

By the Commission.

Dated: January 28, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2359 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] *See, e.g.,* letters from National Mining Association (January 3, 2011); National Stone, Sand & Gravel Association (January 13, 2011); and World Gold Council (January 7, 2011). Comments are available on the Commission's Internet Web site at *http://www.sec.gov/comments/s7-42-10/s74210.shtml.*

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 29

**RIN 1505–AC02**

## Federal Benefit Payments Under Certain District of Columbia Retirement Plans

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On November 22, 2010, the Department of the Treasury published a proposed rule to amend subpart C of its rules promulgated pursuant to the Balanced Budget Act of 1997, as amended (the Act). This notice extends the comment period on the proposed rule to April 21, 2011.

Pursuant to the Act, with certain exceptions, Treasury has responsibility for payment of benefits based on service accrued as of June 30, 1997, under the retirement plans for District of Columbia teachers, police officers, and firefighters. Benefits for service after that date, and certain other benefits, are funded by the District of Columbia. Subpart C, published in 2000 as part of the final regulations to implement the provisions of the Act, establishes the methodology for determining the split between the Federal and District obligations. Pursuant to regulation, the effective date of subpart C was delayed pending completion of Treasury's new automated retirement system, "System to Administer Retirement" (STAR), which replaced the District's legacy automated retirement system. While the new system has been completed, the proposed amended subpart C will establish additional rules and provide additional examples of benefit calculation scenarios, the need for which was identified during systems development. The amendments to subpart C will have minimal financial impact and are introduced to simplify calculations and maintain consistency with the general principles established in the original regulations.

**DATES:** *Comment due date:* April 21, 2011.

**ADDRESSES:** Treasury invites interested members of the public to submit comments on this proposed rule. Comments may be submitted to Treasury by any of the following methods: Submit electronic comments through the Federal government e-rulemaking portal, *http://www.regulations.gov* or by e-mail to *dcpensions@do.treas.gov* or send paper comments to Paul Cicchetti, Department of the Treasury, Office of DC Pensions, Metropolitan Square Building, Room 6G503, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Treasury will post all comments to *http://www.regulations.gov* without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 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) 622–0990. All comments, including attachments and other supporting materials received, are 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:** Paul Cicchetti, (202) 622–1859, Department of the Treasury, Office of DC Pensions, Metropolitan Square Building, Room 6G503, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** On November 22, 2010, the Department of the Treasury published a proposed rule to amend subpart C of its rules promulgated pursuant to the Balanced Budget Act of 1997, as amended, related to certain payments of retirement benefits under the retirement plans for District of Columbia teachers, police officers, and firefighters. *See* 75 FR 71047.

The original comment period closed on January 21, 2011. By letter dated January 14, 2011, the District of Columbia Retirement Board and the District of Columbia Government requested an extension of the public comment period for the proposed rule for 90 additional days. The DC Fire Fighters Association also requested a 90 day extension. In response to these requests, the Department hereby extends the comment period for an additional 90 days so that comments are due on or before April 21, 2011.

Dated: January 24, 2011.

**Nancy Ostrowski,**

*Director, Office of DC Pensions.*

[FR Doc. 2011–2464 Filed 2–2–11; 8:45 am]

**BILLING CODE 4825–10–P**

# Notices

Federal Register

Vol. 76, No. 23

Thursday, February 3, 2011

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lincoln National Forest, New Mexico, North Fork Eagle Creek Wells Special Use Authorization

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Lincoln National Forest will prepare an Environmental Impact Statement (EIS) to document and publicly disclose environmental effects of issuing a new special use permit to the Village of Ruidoso (the applicant) for continued operation of their municipal water supply wells on the North Fork of Eagle Creek, located on National Forest System land. The new permit would include additional terms and conditions for adaptive management (monitoring, evaluation, and modification) to ensure management objectives are met. Management objectives include:

(1) Providing water management flexibility and water conservation incentives to the Village of Ruidoso, in a way that does not foreclose opportunities to transfer a portion of their water rights for these wells to locations off of National Forest System land; and

(2) Minimizing impacts of groundwater drawdown from this well field to maintain surface flows and protect water-dependent ecosystems.

North Fork of Eagle Creek is located in the Sacramento Mountains of south-central New Mexico in Lincoln County north of the Village of Ruidoso and approximately 2.5 miles west of Alto, New Mexico.

**DATES:** Comments concerning the scope of the analysis must be received by March 21, 2011. The draft EIS is expected in October 2011 and the final EIS is expected in June 2012.

**ADDRESSES:** Send written comments to NFEC Project, Smokey Bear Ranger District, 901 Mechem Dr., Ruidoso, NM 88345. You may also send electronic comments to the project e-mail inbox: *comments-southwestern-lincoln@fs.fed.us,* or via facsimile to (575) 257–6174.

**FOR FURTHER INFORMATION CONTACT:** The project Web site at *http://go.usa.gov/Yi9* or contact Deborah McGlothlin (559–920–4952), Eric Turbeville (575–630–3051) or Acting District Ranger George Douds (575–257–4095).

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:**

#### Background

Urban and resort development and drought conditions have placed increasing demands on surface water and groundwater resources of the Eagle Creek Basin. During 2001–2006, the Village of Ruidoso, New Mexico obtained approximately 31 percent of its water supply from the North Fork well field. During drought conditions prior to 2006, over 50 percent of monthly total surface and groundwater diversions for the Village came from the North Fork well field (Village of Ruidoso 2006).

The Village of Ruidoso drilled four production wells on National Forest System land along North Fork Eagle Creek. Three of these wells were put into service in 1988 and remain in use. Concerns have been raised regarding effects of pumping water from these wells. A lawsuit was filed in 2005 based on concerns that operating these wells could be affecting streamflow in Eagle Creek. A 2006 settlement agreement required the Lincoln National Forest to complete an environmental analysis and undertake an independent study of effects of well pumping before a new permit could be issued to the applicant.

The United States Geological Survey (USGS) conducted the independent study from 2007–2009 to determine potential effects of the North Fork well field on streamflow in the Eagle Creek Basin and to provide data for this EIS. The final report was released on October 21, 2010. Findings show that during the study period there was less available sustained baseflow than there was before the wells began pumping in 1988.

When groundwater is pumped from the North Fork wells, it causes a temporary decline in groundwater which lowers the water table and creates an expanding cone of depression around the wells. If the cone of depression continues to expand, it can impact water dependent resources outside the stream corridor. This situation is exacerbated by location of the wells within the stream channel, together with low storage capacity of the aquifer.

Although years of below-average precipitation were recorded during both time periods, there were no days of zero flow recorded at the Eagle Creek gage from 1969–1980. No-flow days were recorded in 11 years (totaling 789 days) of the 20 years analyzed after 1988, with 8 of the last 10 years having no-flow days. No-flow days occurred during periods of both below-average and above-average precipitation during the study period, but no-flow days did not occur during periods of below average precipitation before 1988. It is important to note that the Eagle Creek gage measures flow from both North Fork and South Fork tributaries.

#### Purpose and Need for Action

There is a need for (1) authorizing, under a special use permit, the Village of Ruidoso's legal right to access and divert groundwater from its North Fork Eagle Creek wells on National Forest System land, as an important part of the municipal water supply system that Ruidoso residents and visitors rely upon; and (2) protecting natural resources on the national forest by maintaining adequate surface and groundwater flows to sustain or improve riparian and aquatic ecosystems that may be affected by groundwater drawdown from the pumping of these wells.

#### Proposed Action

The Forest Service proposes to authorize, under a new special use permit, the continued presence and operation of four municipal supply water wells (3 equipped and 1 unequipped) and associated monitoring wells, well-house control station and underground pipelines and powerlines on National Forest System land in the North Fork of Eagle Creek drainage. The new permit could be authorized for up

to 30 years, with stipulations for review and verification of the permit terms and conditions at least every 5 to 10 years. The new permit would be similar to the expired permit, with additional terms and conditions reflecting current adaptive management strategies which both respond to the purpose and need for action, and mitigate potential adverse impacts to surface and groundwater water resources from well operations.

The adaptive management strategy would take into consideration the dynamic nature of groundwater systems by establishing a feedback process to guide the management of groundwater withdrawal rates over time. The NFEC basin is characterized as highly transmissive (water moves through it easily), yet with a relatively low groundwater storage capacity; two characteristics that make it sensitive to variations in precipitation patterns and intensity.

Thresholds would be established for streamflows, water table depths, and riparian vegetation, as described below. Exceeding these thresholds would trigger implementation of adaptive management option(s) to mitigate the impact to surface resources. Adaptive management options currently under consideration include limitations on groundwater withdrawal rates; cessation of pumping for short periods; and/or surface flow augmentation. These options are simply an initial list being considered at this stage of planning; they may be revised as more analysis and evaluation is conducted during preparation of the EIS. In addition, a threshold would be established for the total volume of water withdrawn from the applicant's wells over a consecutive three-year period, where exceeding the threshold would trigger a review of the other thresholds and mitigations to prevent degradation of surface resources.

The proposed action would require the applicant and Forest Service to work in partnership, with assistance from the USGS, to conduct monitoring and adaptive management of ground and surface water resources. Four key monitoring indicators would be used, as described below, to evaluate effectiveness of this management strategy. This adaptive management strategy would be incorporated into terms and conditions of the permit.

**Monitoring Indicators**

*North Fork Surface Flow Volume.* This metric would act as an indicator of surface and subsurface flows necessary to maintain or improve existing riparian vegetation conditions along the NFEC below the existing well field. The applicant would be responsible for continued collection of surface water flow data from the Eagle Creek stream gage, located just below the confluence of North Fork and South Fork tributaries. This gage records surface flow volume rates (quantities) in cubic feet per second (cfs). These data are collected and stored by the USGS, and available to the Forest Service and public on the USGS water data Web site (*http://waterdata.usgs.gov/nwis*).

If there are more than 20 days per year of no surface flow (less than 0.01 cfs) over a period of three consecutive water years at the Eagle Creek gage, or more than 30 no-flow days within any single water year (October 1–September 30), the applicant must reduce groundwater withdrawal rates from these wells. If either of those thresholds is exceeded, then groundwater withdrawals from the North Fork wells would be limited to 50 percent of the volumetric rate of surface flow at the North Fork gage (which is upstream from the wells) until surface flow at the Eagle Creek gage resumes.

The following parameters and assumptions form the baseline on which the North Fork surface flow would be modeled and managed:

- Using a 3-year running average allows for natural fluctuations in precipitation and snowmelt runoff, and periodic short-term drought cycles, considering historic trends.
- The 3-year threshold of 20 no-flow days is equal to about half the average number of no-flow days experienced since pumping began (1988–2009), and should result in an improved trend in surface flows and moisture regimes in the North Fork tributary and its associated riparian area.
- The number of no-flow days would be evaluated based on real-time daily recordings from the Eagle Creek stream gage. No-flow is defined as a daily recording of less than 0.01 cfs.
- It is recognized that Eagle Creek stream gage includes flow contributions from the South Fork tributary. For consistency with data gathered since 1969, the Eagle Creek stream gage will continue to be used, assuming that there will continue to be no measurable changes in human development or water use within the North or South Fork drainages. The South Fork and North Fork stream gages would also continue to be used in long-term monitoring, but have insufficient historical data to initially be used as an effective trigger.

*Water Table Depth.* This metric would provide a continuous indicator of the status of groundwater storage within the NFEC basin. The applicant would continue to maintain monitoring well MW–1B and collect data on changes in the water table levels. Water table depth data (feet below surface) would be collected by USGS and stored in the USGS database. These data would be available to the Forest Service and public on the USGS water data Web site.

Once 5 years of monitoring data from this well have been collected, including the 2 years of data collected prior to developing this EIS, the Forest Service would evaluate this data, and use the 5-year average water table depth to establish a threshold for average water table depth.

The applicant would be required to maintain an average water table depth that is equal to or above this threshold over 3 consecutive water years. If groundwater pumping of North Fork wells results in a declining trend in the average water table depth over any 3 year period, the applicant would reduce diversions from the wells until the average water table depth is reestablished and the Forest Service determines that pumping may resume without creating further departures over a 3 year period.

*Riparian Vegetation.* This metric would provide an indicator of the effects of groundwater withdrawal on the condition and trend of surface resources in and downstream from the NFEC basin. The Forest Service would fund annual or biannual monitoring of riparian vegetation in the project area to include the approximately 2-mile section between the wells and the Eagle Creek stream gage. This would provide a baseline so that any future changes in riparian vegetation in this area would be apparent with future monitoring. Long-term monitoring may occur on riparian areas above the well field as well as on a separate but similar stream reach (to use as a reference point). Monitoring would be conducted through a combination of permanent photo points and field inventories of vegetation canopy cover and species composition. Trends in riparian vegetation canopy cover, composition, or conditions would be evaluated and documented at least every 5 years.

If there are measurable declines in riparian vegetation canopy cover, composition and/or condition over 5 years or longer, and the number of no-flow days at the Eagle Creek stream gage continue to average over 20 days per year, the Forest Service may require diversions from the wells to be reduced to below 50 percent of the annual average well diversions (afy) over the past five years, to help restore riparian vegetation.

*Well Pumping Volume.* The applicant would continue daily monitoring and recording of groundwater withdrawals through the North Fork wells (pumping volumes in acre feet). Combined with precipitation and streamflow records over time, this metric would be used to develop an additional reliable indicator for modeling anticipated effects of groundwater withdrawals on surface resources within the NFEC basin.

An initial threshold of 900 cumulative acre feet over any 3 consecutive water years (300 acre feet per year) would trigger a review by the Forest Service of the current thresholds and mitigations at maintaining or improving surface resource conditions. This threshold is based on current modeling of the average groundwater recharge rate, after subtracting other known and assumed water losses from the NFEC system. If analysis results indicate that current thresholds and mitigations are not sufficient to maintain surface resource conditions, management of groundwater withdrawals would be adjusted to provide additional protections against further degradation of riparian and other surface resources within the NFEC basin.

*Adjustments in Management of Water Withdrawals.* Every 5 years that the permit is in effect, or when triggered by exceeding the water withdrawal threshold described above, the Forest Service would evaluate and document monitoring results to determine effectiveness of the adaptive strategy and determine whether an adjustment to the parameters of this adaptive management strategy are warranted.

- Based on the 5-year evaluations, the Forest Service may relax or further restrict specific parameters of this adaptive management strategy, with modification to the permit.
- Adjusting these parameters would be based on Forest Service determinations of the extent to which the North Fork well operations are consistent with the purpose and need and identified management objectives.

Adaptive management adjustments currently under consideration include: Limitations on groundwater withdrawal rates; cessation of pumping for short periods; and/or surface flow augmentation. These groundwater management options are a preliminary list being considered at this stage of planning; they may be revised as more analysis and evaluation is conducted during preparation of the EIS.

**Possible Alternatives**

*No Pumping Alternative:* The Forest Service would not issue a new permit for the applicant's North Fork well operations and maintenance; the use of these wells would no longer be authorized and would be discontinued.

*No Action (No Change) Alternative:* The Forest Service would issue a new permit for the applicant's North Fork well operations and maintenance with no change in existing well pumping operations; there would be no specific stipulations or limitations on well operations and the permit would be issued under the same terms, conditions, and history of water use that has been in operation since 1988.

*Stream Augmentation Alternative:* This alternative, suggested by the applicant, would be essentially the same as the proposed action previously described, with one main difference. Exceeding the thresholds previously described for streamflows, water table depths, and riparian vegetation would trigger augmentation of streamflow by pumping groundwater into the North Fork of Eagle Creek stream channel to mitigate adverse impacts to surface resources.

**Responsible Official**

The Forest Supervisor of the Lincoln National Forest is the deciding officer for this project. The Forest Supervisor will issue a Record of Decision at the conclusion of the National Environmental Policy Act (NEPA) process, and after evaluating public comments received on the Draft EIS.

**Decision Framework**

The Forest Service is the lead agency for the project. Based on the results of the NEPA analysis and consideration of public comments, the Forest Supervisor will authorize implementation of one of the following: (1) The agency's proposed action, including the adaptive management strategy and any mitigation necessary to minimize or avoid adverse impacts; or (2) an alternative way to meet the purpose and need for action, including any applicable adaptive management strategy or other mitigation necessary to minimize or avoid adverse impacts; or (3) the No Action/No Change alternative or the No Pumping alternative.

**Preliminary Issues**

The main issue to be addressed is the effect that the proposed continuation of well pumping may have on hydrologic resources (surface water and groundwater) in the North Fork Basin, including potential cumulative effects downstream in the larger Eagle Creek watershed. Other issues identified thus far include effects of well pumping on aquatic habitat and fish (particularly brook trout), downstream recreational use (public use of streams for streamside recreation, fishing, and wildlife viewing), riparian vegetation condition, and municipal water supply.

**Scoping Process**

This notice of intent initiates the scoping process, which guides development of this EIS. To assist the Forest Service in identifying and considering concerns about the possible consequences (effects) of the proposed action or possible alternatives being considered, comments should be as specific as possible. A public open house will be held at the Ruidoso Middle School (123 Warrior Drive, Ruidoso, New Mexico 88345) on Thursday, February 17 from 5 p.m. to 7:30 p.m. Forest Service staff will be on hand to meet with the public, answer questions, and discuss the project and process. Comments may be submitted at the meeting, by e-mail, fax or letter within the 45-day scoping period.

It is important that reviewers provide comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns and contentions. Comments, however, are welcome throughout the planning process.

Comments received in response to this solicitation, including names and addresses of commenters, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous commenters will have no standing to participate in subsequent administrative review or judicial review.

Dated: January 27, 2011.

**Robert G. Trujillo,**

*Forest Supervisor, Lincoln National Forest.*

[FR Doc. 2011–2371 Filed 2–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Madera County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Madera County Resource Advisory Committee will be meeting in North Fork, California on February 16th, February 23, 2011 and March 9th, 2011, and if necessary on March 16th, 2011. The purpose of these meetings will be to discuss and then vote on submitted

proposals for funding as authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) for expenditure of Payments to States Madera County Title II funds.

**DATES:** The meetings will be held on February 16th, February 23, 2011 and March 9th, 2011, and if necessary on March 16th, 2011, from 6:30 p.m. to 8:30 p.m. in North Fork, CA.

**ADDRESSES:** The meetings will be held at the Bass Lake Ranger District, 57003 Road 225, North Fork, California 93643. Send written comments to Julie Roberts, Madera County Resource Advisory Committee Coordinator, c/o Sierra National Forest, Bass Lake Ranger District, at the above address, or electronically to *jaroberts@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Julie Roberts, Madera County Resource Advisory Committee Coordinator, (559) 877–2218 ext. 3159.

**SUPPLEMENTARY INFORMATION:** The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Madera County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meetings.

Dated: January 24, 2011.

**Dave Martin,**

*District Ranger.*

[FR Doc. 2011–2429 Filed 2–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Southwest Idaho Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended, (Pub. L. 110–343), the Boise, Payette, Salmon-Challis, and Sawtooth National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

**DATES:** Thursday, February 17, 2011, beginning at 9 a.m.

**ADDRESSES:** Idaho Department of Fish and Game Headquarters, Trophy Room, 600 South Walnut Street, Boise, ID 83712.

**SUPPLEMENTARY INFORMATION:** Agenda topics will include review and approval of project proposals, and is an open public forum.

**FOR FURTHER INFORMATION CONTACT:** Kim Pierson, Designated Federal Official, at (208) 347–0301 or e-mail *kpierson@fs.fed.us.*

Dated: January 27, 2011.

**Suzanne C. Rainville,**

*Forest Supervisor, Payette National Forest.*

[FR Doc. 2011–2431 Filed 2–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Dixie Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The Dixie Resource Advisory Committee will meet in Cedar City, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of this meeting is to make recommendations for Title II projects.

**DATES:** Wednesday, March 2, 2011; Wednesday, March 16, 2011.

**ADDRESSES:** Both meetings will be held at Paiute Tribe of Utah Headquarters, 440 North Paiute Drive (200 East), Cedar City, Utah. The public is invited to attend the meetings.

**FOR FURTHER INFORMATION CONTACT:** Kenton Call, RAC Coordinator, Dixie National Forest, (435) 865–3730; e-mail: *ckcall@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Welcome and committee introductions; (2) Review of category voting from previous meeting; (3) RAC discussion project recommendations; and (4) Public comment on any propopals. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input will be accepted by the RAC during the meetings.

Dated: January 28, 2011.

**Robert G. MacWhorter,**

*Forest Supervisor.*

[FR Doc. 2011–2432 Filed 2–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Kenai Peninsula-Anchorage Borough Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Kenai Peninsula-Anchorage Borough Resource Advisory Committee will meet in Portage Valley, Alaska. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review and recommend proposed projects.

**DATES:** The meeting will be held February 26, 2011 at 10 a.m.

**ADDRESSES:** The meeting will take place at the Begich Boggs Visitor's Center, 800 Portage Lake Loop, Portage, AK 99587.

Send written comments to Kenai Peninsula-Anchorage Borough Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 390, Seward, AK 99664 or electronically to *slatimer@fs.fed.us.*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Seward Ranger District Office, 334 4th Ave., Seward, AK 99664. Visitors are encouraged to call ahead to Stephanie Latimer 907–224–4103 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Travis Moseley, Designated Federal Official, c/o USDA Forest Service, P.O. Box 390, Seward, AK 99664, telephone (907) 288–7730.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: Reviewing and recommending proposed projects. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will

be provided and individuals who made written requests by February 20, 2011 will have the opportunity to address the Committee at those sessions.

Dated: January 26, 2011.

**Tim Charnon,**

*District Ranger, Glacier Ranger District.*

[FR Doc. 2011–2279 Filed 2–2–11; 8:45 am]

**BILLING CODE 3410–11–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning meeting of the Connecticut State Advisory Committee will convene at 4 p.m. on Wednesday, Feb. 16, 2011, at the University of Connecticut, School of Law, Faculty Lounge, 55 Elizabeth Street, Hartford, Connecticut 06105. The purpose of the meeting is to plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by March 16, 2011. The address is Eastern Regional Office, 624 9th St., NW., Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact the Eastern Regional Office at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC on January 28, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2011–2326 Filed 2–2–11; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice; Amended

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, February 11, 2011; 9:30 a.m. EST.

**PLACE:** 624 Ninth Street, NW., Room 540, Washington, DC 20425.

**Briefing Agenda**

This briefing is open to the public.

Topic: Disparate Impact in School Discipline Policies.

I. Introductory Remarks by Chairman.
II. Speakers' Presentations.
III. Questions by Commissioners and Staff Director.
IV. Adjourn Briefing.

**Meeting Agenda**

This meeting is open to the public.

I. Approval of Agenda
II. Welcome New Commissioners
III. Management and Operations:
- Review of transition, order of succession, continuity of operations.
- Review of 2011 meeting calendar.
- Staff Director's report.

IV. Program Planning: Update and discussion of projects
- Cy Pres.
- Disparate Impact in School Discipline Policies.
- Gender and the Wage Gap.
- Title IX—Sex Discrimination in Liberal Arts College Admissions.
- Eminent Domain Project.
- NBPP.

V. State Advisory Committee Issues:
- Consideration of Vermont SAC Chair.
- Re-chartering the Alabama SAC.

VI. Approval of Dec. 3, 2010 Meeting Minutes
VII. Announcements
VIII. Adjourn

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit, (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: February 1, 2011.

**Christopher Byrnes,**

*Delegated the Authority of the Staff Director.*

[FR Doc. 2011–2475 Filed 2–1–11; 4:15 pm]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA179**

### Endangered Species; File No. 14726

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

**ACTION:** Notice; receipt of application for permit modification.

**SUMMARY:** Notice is hereby given that Blair Witherington, PhD, Florida Fish and Wildlife Conservation Commission, 9700 South A1A, Melbourne Beach, FL 32951, has requested a modification to scientific research Permit No. 14726.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before March 7, 2011.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14726–01 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the above address. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman or Kristy Beard, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject modification to Permit No. 14726 is requested under the authority of the Endangered Species Act of 1973,

as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 14726, issued on September 3, 2010 (75 FR 61133), authorizes research to locate and describe areas of the Atlantic Ocean and Gulf of Mexico near Florida that serve as developmental habitat for pelagic-stage juvenile and neonate loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and leatherback (*Dermochelys coriacea*) sea turtles, to quantify threats to pelagic sea turtles, and to gather information on their life-history, genetics, movements, behavior, and diet. Researchers are authorized to capture by dip net, flipper and passive integrated transponder tag, measure, weigh, and oral swab sea turtles. A subset of animals may be skin biopsied, lavaged or have a satellite tag attached.

Dr. Witherington requests a modification to the permit to: (1) Increase the number and life stages of sea turtles (up to 600 loggerheads, 550 greens, 100 hawksbills, and 550 Kemp's ridleys) that may be taken annually; (2) authorize fecal sampling for all animals and satellite tagging for a subset of green sea turtles; and (3) expand the authorized study area to include the entire Gulf of Mexico. This work would (1) identify threats to pelagic sea turtles, and (2) document the density, condition, diet, and potential Mississippi Canyon 252 oil exposure of pelagic sea turtles associated with floating Sargassum as part of the post-spill Natural Resources Damage Assessment of the BP Deepwater Horizon event. The modification would be valid through December 31, 2011.

Dated: January 28, 2011.

**Tammy C. Adams,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–2393 Filed 1–31–11; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA)

### Nomination of Existing Marine Protected Areas to the National System of Marine Protected Areas and Updates to the List of National System Marine Protected Areas

**AGENCY:** NOAA, Department of Commerce (DOC).

**ACTION:** Public notice and opportunity for comment on the list of nominations received from State and territorial marine protected area programs to join the National System of Marine Protected Areas and notice of updates to the List of National System Marine Protected Areas (MPAs).

**SUMMARY:** This notice: (1) Announces the addition of four MPAs managed by the National Marine Fisheries Service in consultation with the Mid Atlantic Fishery Management Council to the National System of MPAs (national system), thereby updating the List of National System MPAs; and (2) corrects a **Federal Register** notice published on December 27, 2010 announcing the nomination of 38 existing marine protected areas to the national system.

In August 2010, NOAA and the Department of the Interior (DOI) invited Federal, State, commonwealth, and territorial marine protected area (MPA) programs with potentially eligible existing MPAs to nominate their sites to the national system. The national system and the nomination process are described in the *Framework for the National System of Marine Protected Areas of the United States* (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, (73 FR 69608) and provides guidance for collaborative efforts among Federal, State, commonwealth, territorial, Tribal and local governments and stakeholders to develop an effective and well coordinated national system of MPAs that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

**DATES:** Comments on the new nominations to the national system of MPAs are due March 7, 2011.

**ADDRESSES:** Comments should be sent to Lauren Wenzel, National Oceanic and Atmospheric Administration, National Marine Protected Areas Center, 1305 East West Highway, N/ORM, Silver Spring, MD 20910. *Fax:* (301) 713–3110. *E-mail: mpa.comments@noaa.gov.* Comments will be accepted in written form by mail, e-mail, or fax.

**FOR FURTHER INFORMATION CONTACT:** Lauren Wenzel, NOAA, at 301–713–3100, ext. 136 or via e-mail at *mpa.comments@noaa.gov.* An electronic copy of the list of nominated MPAs is available for download at *http://www.mpa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background on National System**

The National System of MPAs includes member MPA sites, networks and systems established and managed by Federal, State, Tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. Executive Order 13158 defines an MPA as: "any area of the marine environment that has been reserved by Federal, State, territorial, Tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." As such, MPAs in the national system include sites with a wide range of protections, including multiple use areas that manage a broad spectrum of activities and no-take reserves where all extractive uses are prohibited. Although sites in the national system may include both terrestrial and marine components, the term MPA as defined in the Framework refers only to the marine portion of a site (below the mean high tide mark).

Benefits of joining the national system of MPAs, which are expected to increase over time as the system matures, include a facilitated means to work with other MPAs in the region, and nationally on issues of common conservation concern; fostering greater public and international recognition of MPAs, MPA programs, and the resources they protect; priority in the receipt of available training and technical support, MPA partnership grants with the National Fish and Wildlife Foundation, cooperative project participation, and other support for cross-cutting needs; and the opportunity to influence Federal and regional ocean conservation and management initiatives (such as integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not otherwise exist.

Joining the national system does not restrict or require changes affecting the designation process for new MPAs or management and modification of

existing MPAs. It does not bring State, territorial or local sites under Federal authority. It does not establish new regulatory authority or interfere with the exercise of existing agency authorities. The national system is a mechanism to foster greater collaboration among participating MPA sites and programs to enhance stewardship in the marine waters of the United States.

**Nomination Process**

The Framework describes a nomination process to allow existing MPAs that meet the entry criteria to become part of the system.

There are four entry criteria for existing MPAs to join the national system, including one that applies only to cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.

2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).

3. Contributes to at least one priority conservation objective as listed in the Framework.

4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

The MPA Center used existing information contained in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/helpful_resources/inventory.html,* and potentially eligible sites are posted online at *http://www.mpa.gov/pdf/national-system/nominationsummary810.pdf*.

As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

**Updates to List of National System MPAs**

On July 6, 2010, the following MPAs were nominated by the National Marine Fisheries Service, in consultation with the Mid Atlantic Fishery Management Council, to join the national system.

**Federal Marine Protected Areas**

*Fishery Management Gear Restricted Areas (Under Tilefish Fishery Management Plan)*

Oceanographer Canyon,
Lydonia Canyon,
Veatch Canyon,
Norfolk Canyon.

The nominations were open for a 30-day public comment period from July 6–August 5, 2010. No public comments were received. These nominations have now been accepted and added to the List of National System MPAs, which now includes 258 Federal, State and territorial MPAs. The List is available at *http://www.mpa.gov.*

**List of MPAs Nominated to the National System—Available for Public Comment**

On December 27, 2010, NOAA published a **Federal Register** notice announcing the nomination of 38 MPAs by State and territorial resource agencies to join the national system of MPAs. However, the published list was incomplete, listing only 24 MPAs nominated by California, rather than 31. The corrected list is provided here. A list providing more detail for each site is available at *http://www.mpa.gov.*

**American Samoa**

Alofau Village Marine Protected Area,
Amaua and Auto Village Marine Protected Area,
Fagamalo Village Marine Protected Area,
Masausi Village Marine Protected Area,
Matuu and Faganeanea Village Marine Protected Area,
Poloa Village Marine Protected Area,
Vatia Village Marine Protected Area.

**California**

Point Arena State Marine Reserve,
Point Arena State Marine Conservation Area,
Sea Lion Cove State Marine Conservation Area,
Saunders Reef State Marine Conservation Area,
Del Mar Landing State Marine Reserve,
Stewarts Point State Marine Reserve,
Salt Point State Marine Conservation Area,
Gerstle Cove State Marine Reserve,
Russian River State Marine Recreational Management Area,
Russian River State Marine Conservation Area,
Bodega Head State Marine Reserve,
Bodega Head State Marine Conservation Area,
Estero Americano State Marine Recreational Management Area,
Estero de San Antonio State Marine Recreational Management Area,
Drakes Estero State Marine Conservation Area,
Estero de Limantour State Marine Reserve,
Point Reyes State Marine Reserve,
Point Reyes State Marine Conservation Area,
Duxbury State Marine Conservation Area,
Southeast Farallon Island State Marine Reserve,
Southeast Farallon Island State Marine Conservation Area,
Montara State Marine Reserve,
Pillar Point State Marine Conservation Area,
Point Reyes Special Closure,
Point Resistance Special Closure,
Double Point/Stormy Stack Special Closure,
Egg (Devil's Slide) Rock to Devil's Slide Special Closure,
North Farallon Islands & Isle of St. James Special Closure,
Southeast Farallon Special Closure A,
North Farallon Islands State Marine Reserve,
Southeast Farallon Special Closure B,
Stewarts Point State Marine Conservation Area.

**Review and Approval**

Following this public comment period, the MPA Center will forward public comments to the relevant managing entity or entities, which will reaffirm or withdraw (in writing to the MPA Center) the nomination. After final MPA Center review, mutually agreed upon MPAs will be accepted into the national system and the List of National System MPAs will be posted at *http://www.mpa.gov.*

Dated: January 26, 2011.

**Juliana P. Blackwell,**

*Acting Deputy Assistant Administrator.*

[FR Doc. 2011–2327 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## COMMODITY FUTURES TRADING COMMISSION

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63798; File No. 265–26]**

### Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues

**AGENCY:** Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Meeting of Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues.

**SUMMARY:** The Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues will hold a public meeting on February 18, 2011, from 9:30 a.m. to 12 p.m., at the CFTC's Washington, DC headquarters. At the meeting, the committee will discuss matters relating to its recommendations regarding the market events of May 6, 2010, and other matters relating to the on-going work of the committee.

**DATES:** The meeting will be held on February 18, 2011 from 9:30 a.m. to 12 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by February 17, 2011.

**ADDRESSES:** The meeting will take place in the first floor hearing room at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Written statements may be submitted to either the CFTC or the SEC; all submissions will be reviewed jointly by the two agencies. Please use the title "Joint CFTC–SEC Advisory Committee" in any written statement you may submit. Statements may be submitted to any of the addresses listed below. Please submit your statement to only one address.

**E-mail**

*Jointcommittee@cftc.gov* or *rule-comments@sec.gov.* If e-mailing to this address, please refer to "File No. 265–26" on the subject line.

**SEC's Internet Submission Form**

*http://www.sec.gov/rules/other.shtml.*

**Regular Mail**

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretary or

Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090. Comments mailed to this address should be submitted in triplicate and should refer to File No. 265–26.

**Fax**

(202) 418–5521.

Any statements submitted in connection with the committee meeting will be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Martin White, Committee Management Officer, at (202) 418–5129, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; Ronesha Butler, Special Counsel, at (202) 551–5629, Division of Trading and Markets, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090; or Elizabeth M. Murphy, Committee Management Officer, at (202) 551–5400, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

The meeting will be webcast on the CFTC's Web site, *http://www.cftc.gov.* Members of the public also can listen to the meeting by telephone. The public access call-in numbers will be announced at a later date.

**Authority:** 5 U.S.C. app. 2 § 10(a)(2).

By the Commodity Futures Trading Commission.

Dated: January 31, 2011.

**Martin White,**

*Committee Management Officer.*

By the Securities and Exchange Commission.

**Elizabeth M. Murphy,**

*Committee Management Officer.*

[FR Doc. 2011–2424 Filed 2–2–11; 8:45 am]

**BILLING CODE 6351–01–P; 8011–01–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled AmeriCorps National Civilian Community Corp's NCCC Sponsor Survey for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Colleen Clay, at (202) 606–7561 or e-mail to *cclay@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

**Comments**

A 60-day public comment Notice was published in the **Federal Register** on November 23, 2010. This comment period ended January 24, 2011. One non-substantive (process) public comment was received from this Notice and a response was provided.

*Description:* The Corporation is seeking approval of AmeriCorps National Civilian Community Corp's NCCC Sponsor Survey which is used by NCCC projects and partnerships office to collect project performance data.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* NCCC Sponsor Survey.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* The NCCC sponsor survey will be administered to the project sponsor for any NCCC service project. These sponsors apply to receive a 10-person NCCC team for a period of six-eight weeks to implement local service projects. There are approximately 165 projects in each of four project rounds per year. The project sponsors are uniquely able to provide the information sought in the NCCC Sponsor Survey.

*Total Respondents:* Based on the number of projects completed last fiscal year, NCCC expects to administer 660 surveys each fiscal year. These may not be unique responders as many sponsors receive teams on a rotating basis and thus may complete the survey more than once per year. Assuming the distribution of project types remains constant, the number of survey sections completed by a given sponsor will be distributed as follows: One section—54 respondents; two sections—228 respondents; 3 sections—270

respondents; four sections—108 respondents.

*Frequency:* Quarterly distribution. Each sponsor will complete only one survey per project.

*Average Time per Response:* One section—8 minutes; Two sections—15 minutes; Three sections—22 minutes; Four sections—30 minutes.

*Estimated Total Burden Hours:* 217 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: January 26, 2011.

**Charles Davenport,**

*Director of Projects and Partnerships, National Civilian Community Corps.*

[FR Doc. 2011–2316 Filed 2–2–11; 8:45 am]

**BILLING CODE 6050–$$–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Meeting Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

**DATE AND TIME:** Tuesday, February 8, 2011, 11 a.m.–12:15 p.m.

**PLACE:** Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

**CALL-IN INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 800–857–9872 conference call access code number 5898. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 888–568–0906. The end replay date: February 15, 2011, 10:59 p.m. (CT).

**STATUS:** Open.

**Matters To Be Considered**

I. Chair's Opening Comments
II. Consideration of Previous Meeting's Minutes
III. CEO Report
IV. Committee Reports:
  a. Oversight, Governance and Audit Committee
  b. External Relations Committee
  c. Program, Budget and Evaluation Committee
V. Consideration of the Proposed 2011–2015 Strategic Plan
VI. Public Comments

Members of the public who would like to learn more about the proposed strategic plan and the development process should visit the CNCS Web site *http://www.nationalservice.gov/about/focus_areas/index.asp* where the draft document will be posted in advance of the meeting.

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *esamose@cns.gov* subject line: FEB 2011 CNCS BOARD MEETING. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments should be no more than 2 minutes.

**REASONABLE ACCOMMODATIONS:** The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green at *igreen@cns.gov* or 202–606–6861 by 5 p.m., February 4, 2011.

**CONTACT PERSON FOR MORE INFORMATION:** Emily Samose, Strategic Advisor for Board Engagement, Corporation for National and Community Service, 9th Floor, Room 9613C, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–7564. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *esamose@cns.gov.*

Dated: February 1, 2011.

**Wilsie Y. Minor,**

*Acting General Counsel.*

[FR Doc. 2011–2556 Filed 2–1–11; 4:15 pm]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 4, 2011.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 31, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* Revision.

*Title of Collection:* National Title I Study of Implementation and Outcomes: Early Childhood Language Development.

*OMB Control Number:* 1850–0871.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Once.

*Affected Public:* Individuals and households; not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

*Total Estimated Number of Annual Responses:* 22,760.

*Total Estimated Number of Annual Burden Hours:* 8,725.

*Abstract:* The study is being conducted as part of the National Assessment of Title I, mandated by Title I, Part E, Section 1501 of the Elementary and Secondary Education Act. The study is designed to identify school programs and instructional practices associated with improved language development, background knowledge, and comprehension outcomes for children in prekindergarten through third grade. Analyses will estimate the associations between instructional programs and practices and student outcomes to inform future rigorous evaluation of strategies to improve language and comprehension outcomes for at-risk children in these early years of school. We will identify 10 locations for the study, including 7–8 of the largest urban school districts and 2–3 States with large Title I populations. Within each of the 10 locations, we will select 5 high-performing and 5 low-performing schools. Within each school, we will randomly sample an average of three classrooms per grade. Within each classroom, we will randomly sample 8 students. Students will be assessed in fall and spring. Principals, teachers, and parents will be surveyed once, and students' classrooms will be observed twice in the fall and twice in the spring. Information from students' school records will be extracted at the end of the school year.

Requests for 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 4494. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–2379 Filed 2–2–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

*Correction*

In notice document 2011–2099 on pages 5356–5357 in the issue of Monday, January 31, 2011, make the following correction:

On page 5356, in the second column, in the **DATES** section, "January 31, 2011" should read "March 2, 2011".

[FR Doc. C1–2011–2099 Filed 2–2–11; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF ENERGY

### Reducing Regulatory Burden

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Request for information.

**SUMMARY:** As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, the Department of Energy (DOE) is seeking comments and information from interested parties to assist DOE in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of DOE's review is to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

**DATES:** Written comments and information are requested on or before March 21, 2011. Reply comments are requested on or before April 4, 2011.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by "Regulatory Burden RFI," by any of the following methods:

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

*E-mail: Regulatory.Review@hq.doe.gov.* Include "Regulatory Burden RFI" in the subject line of the message.

*Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585.

*Docket:* For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Daniel Cohen, Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585. E-mail: *Regulatory.Review@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive Order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).
- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, Agencies must develop a preliminary plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program.

To implement the Executive Order, the Department is taking two immediate steps to launch its retrospective review of existing regulatory and reporting requirements. *First,* as described further below, the Department issues this Request for Information (RFI) seeking public comment on how best to review

its existing regulations and to identify whether any of its existing regulations should be modified, streamlined, expanded, or repealed. *Second,* the Department has created a link on the Web page of DOE's Office of the General Counsel to an e-mail in-box at *Regulatory.Review@hq.doe.gov*, which interested parties can use to identify to DOE—on a continuing basis—regulations that may be in need of review in the future. It may also be used to provide thoughts in this proceeding outside of the traditional initial comment and reply comment filings (all such comments will be made public). Together, these steps will help the Department ensure that its regulations remain necessary, properly tailored, up-to-date requirements that effectively achieve regulatory objectives without imposing unwarranted costs.

**Request for Information**

Pursuant to the Executive Order, the Department is developing a preliminary plan for the periodic review of its existing regulations and reporting obligations. The Department's goal is to create a systematic method for identifying those significant rules that are obsolete, unnecessary, unjustified, or simply no longer make sense. While this review will focus on the elimination of rules that are no longer warranted, DOE will also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, as relevant, undertaking new rulemakings.

Consistent with the Department's commitment to public participation in the rulemaking process, the Department is beginning this process by soliciting views from the public on how best to conduct its analysis of existing DOE rules and how best to identify those rules that might be modified, streamlined, expanded, or repealed. It is also seeking views from the public on specific rules or Department imposed obligations that should be altered or eliminated. While the Department promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial first step in DOE's review of its existing regulations.

**List of Questions for Commenters**

The following list of questions represents a preliminary attempt to identify issues raised by the Department's efforts to develop a preliminary plan for the retrospective analysis of its regulations and to identify rules/obligations on which it should immediately focus. This non-exhaustive list is meant to assist in the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these questions or others, DOE requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation where available. The Department also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.

(1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

(3) Are there regulations that simply make no sense or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

(8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

(9) Are there any of the Department's regulations that fail to make a reasoned determination that its benefits justify its costs; or that are not tailored to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; or that fail to select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)?

(10) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.

(11) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. While responses to this RFI do not bind DOE to any further actions related to the response, all submissions will be made publically available on *http://www.regulations.gov.*

Issued in Washington, DC on January 28, 2011.

**Scott Blake Harris,**

*General Counsel.*

[FR Doc. 2011–2368 Filed 2–2–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

January 27, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2783–002.
*Applicants:* Arthur Kill Power LLC
*Description:* Arthur Kill Power LLC submits tariff filing per 35: Arthur Kill—Amendment to MBR Tariff 01262011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5100
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2784–002.
*Applicants:* Astoria Gas Turbine Power LLC
*Description:* Astoria Gas Turbine Power LLC submits tariff filing per 35: Astoria—Amendment to MBR Tariff 01/26/2011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5106
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2795–002.
*Applicants:* Conemaugh Power LLC
*Description:* Conemaugh Power LLC submits tariff filing per 35: Conemaugh—Amendment to MBR Tariff 01262011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5107
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2798–002.
*Applicants:* Connecticut Jet Power LLC
*Description:* Connecticut Jet Power LLC submits tariff filing per 35: Connecticut Jet—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5129
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2799–002.
*Applicants:* Devon Power LLC
*Description:* Devon Power LLC submits tariff filing per 35: Devon—Amendment to MBR Tariff 01/26/2011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5108
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2846–002.
*Applicants:* Huntley Power LLC
*Description:* Huntley Power LLC submits tariff filing per 35: Huntley—Amendment to MBR Tariff 01262011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5109
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2875–002.
*Applicants:* Keystone Power LLC
*Description:* Keystone Power LLC submits tariff filing per 35: Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5111
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2878–002.
*Applicants:* Middleton Power LLC
*Description:* Middleton Power LLC submits tariff filing per 35: Middleton—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5112
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2879–002.
*Applicants:* Montville Power LLC
*Description:* Montville Power LLC submits tariff filing per 35: Montville—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5113
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2880–002.
*Applicants:* NEO Freehold LLC
*Description:* NEO Freehold LLC submits tariff filing per 35: NEO Freehold—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5115
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2888–002.
*Applicants:* Norwalk Power LLC
*Description:* Norwalk Power LLC submits tariff filing per 35: Norwalk—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5117
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2896–002.
*Applicants:* NRG Energy Center Dover LLC
*Description:* NRG Energy Center Dover LLC submits tariff filing per 35: ECD—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5118
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2913–002.
*Applicants:* NRG Energy Center Paxton LLC
*Description:* NRG Energy Center Paxton LLC submits tariff filing per 35: ECP—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5120
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2914–002.
*Applicants:* NRG New Jersey Energy Sales LLC
*Description:* NRG New Jersey Energy Sales LLC submits tariff filing per 35: NJES—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5121
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2915–002.
*Applicants:* NRG Rockford II LLC
*Description:* NRG Rockford II LLC submits tariff filing per 35: Rockford II—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5122
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2916–002.
*Applicants:* NRG Rockford LLC
*Description:* NRG Rockford LLC submits tariff filing per 35: Rockford—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5123
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2932–002.
*Applicants:* Somerset Power LLC
*Description:* Somerset Power LLC submits tariff filing per 35: Somerset—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5125
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2947–002.
*Applicants:* Vienna Power LLC
*Description:* Vienna Power LLC submits tariff filing per 35: Vienna—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.
*Filed Date:* 01/27/2011
*Accession Number:* 20110127–5126
*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–2969–002.
*Applicants:* Oswego Harbor Power LLC
*Description:* Oswego Harbor Power LLC submits tariff filing per 35: Oswego

Harbor—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5124

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER10–3223–002.

*Applicants:* Indian River Power LLC

*Description:* Indian River Power LLC submits tariff filing per 35: Indian River—Amendment to MBR Tariff 01272011 to be effective 10/8/2010.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5110

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011.

*Docket Numbers:* ER11–63–001.

*Applicants:* Long Beach Peakers LLC

*Description:* Long Beach Peakers LLC submits tariff filing per 35: Long Beach Peakers—Amendment to MBR Tariff 01272011 to be effective 10/11/2010.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5143

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER11–66–001.

*Applicants:* Saguaro Power Company LP

*Description:* Saguaro Power Company LP submits tariff filing per 35: Saguaro—Amendment to MBR Tariff 01272011 to be effective 10/11/2010.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5144

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011

*Docket Numbers:* ER11–2760–000.

*Applicants:* California Independent System Operator Corporation

*Description:* California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–01–26 CAISO's Start-Up and Minimum Load Amendment to be effective 4/1/2011.

*Filed Date:* 01/26/2011

*Accession Number:* 20110126–5395

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2761–000.

*Applicants:* Florida Power Corporation

*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 146 under Florida Power Corporation OATT to be effective 1/1/2011.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5012

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011.

*Docket Numbers:* ER11–2762–000.

*Applicants:* Florida Power Corporation

*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 148 under Florida Power Corporation OATT to be effective 1/1/2011.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5104

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011.

*Docket Numbers:* ER11–2763–000.

*Applicants:* Florida Power Corporation

*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 145 under Florida Power Corporation OATT to be effective 1/1/2011.

*Filed Date:* 01/27/2011

*Accession Number:* 20110127–5114

*Comment Date:* 5 p.m. Eastern Time on Thursday, February 17, 2011.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–2347 Filed 2–2–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings # 1

January 26, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG11–49–000.

*Applicants:* Gratiot County Wind LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Gratiot County Wind LLC.

*Filed Date:* 01/26/2011.

*Accession Number:* 20110126–5366.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1674–002.

*Applicants:* Deseret Generation & Transmission Co-operative, Inc.

*Description:* Deseret Generation & Transmission Co-operative, Inc. submits tariff filing per 35: Triennial Market Power Update to be effective 7/1/2010.

*Filed Date:* 01/26/2011.

*Accession Number:* 20110126–5168.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 28, 2011.

*Docket Numbers:* ER10–3043–003.

*Applicants:* New York Independent System Operator, Inc.

*Description:* New York Independent System Operator, Inc. submits tariff filing per 35: In-city buyer side mitigation compliance to be effective 11/27/2010.

*Filed Date:* 01/25/2011.

*Accession Number:* 20110125–5270.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 15, 2011.

*Docket Numbers:* ER11–2299–001.

*Applicants:* Green Mountain Energy Company.

*Description:* Green Mountain Energy Company submits tariff filing per 35: Green Mountain—Amendment to MBR Tariff 01262011 to be effective 12/6/2010.

*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5369.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2370–001.
*Applicants:* Cambria CoGen Company.
*Description:* Cambria CoGen Company submits tariff filing per 35: Cambria MBR Compliance Filing to be effective 2/14/2011.
*Filed Date:* 01/24/2011.
*Accession Number:* 20110124–5183.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 08, 2011.

*Docket Numbers:* ER11–2370–002.
*Applicants:* Cambria CoGen Company.
*Description:* Cambria CoGen Company submits tariff filing per 35: Cambria MBR ETariff to be effective 2/14/2011.
*Filed Date:* 01/25/2011.
*Accession Number:* 20110125–5331.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 8, 2011.

*Docket Numbers:* ER11–2748–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. V4–005, First Revised Service Agreement No. 2553 to be effective 11/8/2010.
*Filed Date:* 01/25/2011.
*Accession Number:* 20110125–5358.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 15, 2011.

*Docket Numbers:* ER11–2749–000.
*Applicants:* Elm Road Services LLC.
*Description:* Elm Road Services, LLC submits Termination of Power Purchase Agreement.
*Filed Date:* 01/24/2011.
*Accession Number:* 20110125–0201.
*Comment Date:* 5 p.m. Eastern Time on Monday, February 14, 2011.

*Docket Numbers:* ER11–2750–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2716, Queue W2–020 & W2–021, Bellmawr and PSE&G to be effective 12/28/2010.
*Filed Date:* 01/25/2011.
*Accession Number:* 20110125–5379.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 15, 2011.

*Docket Numbers:* ER11–2751–000.
*Applicants:* Idaho Power Company.
*Description:* Idaho Power Company submits tariff filing per 35.15: RMS Agreement Cancellation to be effective 1/31/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5023.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2752–000.
*Applicants:* Idaho Power Company.
*Description:* Idaho Power Company submits tariff filing per 35.13(a)(2)(iii: Intra-Hour Scheduling, Network Operating Agreement and Various Misc Updates to be effective 3/31/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5037.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2753–000.
*Applicants:* Cedar Point Wind, LLC.
*Description:* Cedar Point Wind, LLC submits tariff filing per 35.1: Application for MBR and MBR Tariffs to be effective 4/1/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5135.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2754–000.
*Applicants:* AP Gas & Electric (TX), LLC.
*Description:* AP Gas & Electric (TX), LLC submits tariff filing per 35.12: Petition for Approval of Initial Market-Based Rate Tariff to be effective 2/25/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5166.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2755–000.
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.
*Description:* ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: FRM Cost Allocation Changes to be effective 6/1/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5266.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2756–000.
*Applicants:* Edison Sault Electric Company.
*Description:* Edison Sault Electric Company, Cancellation of Electric Tariff.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5273.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2757–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: WMPA No. 2717, Queue No. W2–060, Renovalia Energy, L.L.C. and PSE&G to be effective 12/28/2010.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5286.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2758–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2058 Southwestern Power Administration Loss Compensation to be effective 1/1/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5287.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ER11–2759–000.
*Applicants:* The Dayton Power and Light Company.
*Description:* The Dayton Power and Light Company submits tariff filing per 35.13(a)(2)(iii: FERC Rate Schedule No. 42, Village of Arcanum to be effective 1/25/2011.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5304.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES11–15–000.
*Applicants:* Michigan Electric Transmission Co., LLC.
*Description:* Application of Michigan Electric Transmission Company, LLC under Section 204 of the Federal Power Act.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5295.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

*Docket Numbers:* ES11–16–000.
*Applicants:* International Transmission Company.
*Description:* Application of International Transmission Company under Section 204 of the Federal Power Act.
*Filed Date:* 01/26/2011.
*Accession Number:* 20110126–5300.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, February 16, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA11–5–000.
*Applicants:* Idaho Power Company.
*Description:* Idaho Power Company's Annual Compliance Report on Operational Penalty Assessments and Distributions.
*Filed Date:* 01/25/2011.
*Accession Number:* 20110125–5422.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, February 15, 2011.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR10–13–002.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Petition of North American Electric Reliability Corporation for Approval of Amendment to the 2011 Business Plan and Budget of Texas Reliability Entity, Inc. and Amendment to Exhibit E to Delegation Agreement with Texas Reliability Entity, Inc.

*Filed Date:* 01/24/2011.

*Accession Number:* 20110124–5244.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 14, 2011.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–2349 Filed 2–2–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2753–000]**

### Cedar Point Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 27, 2011.

This is a supplemental notice in the above-referenced proceeding Cedar Point Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 16, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–2350 Filed 2–2–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–2730–000]**

### Energy Exchange International, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 27, 2011.

This is a supplemental notice in the above-referenced proceeding Energy Exchange International, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 16, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–2346 Filed 2–2–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER11–2741–000]**

## CPV Batesville, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 27, 2011.

This is a supplemental notice in the above-referenced proceeding CPV Batesville, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 16, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–2351 Filed 2–2–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER11–2735–000]**

## Censtar Energy Corp.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 27, 2011.

This is a supplemental notice in the above-referenced proceeding Censtar Energy Corp.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is February 16, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–2352 Filed 2–2–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPA–2010–0987, FRL–9261–7]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Implementation of the Oil Pollution Act Facility Response Plan Requirements (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on March 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 4, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OPA–2010–0987, to EPA, by one of the following methods:

(1) *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *E-mail: Docket.RCRA@epa.gov,* Attention Docket ID No, EPA–HQ–OPA–2010–0987.

(3) *Fax:* 202–566–9744, Attention Docket ID No. EPA–HQ–OPA–2010–0987.

(4) *Mail:* EPA Docket Center, (EPA/DC), Docket ID No. EPA–HQ–OPA–2010–0987, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(5) *Hand Delivery:* EPA Docket Center, (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OPA–2010–0987. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OPA–2010–0987. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** J. Troy Swackhammer, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–1966; *fax number:* (202) 564–2625; *e-mail address: swackhammer.j-troy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPA–2010–0987, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number to make an appointment to view the docket is (202) 566–0276.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

### What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

### What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What information collection activity or ICR does this apply to?**

*Affected entities:* Entities potentially affected by this action are a subset of facilities that are required to have a Spill Prevention, Control, and Countermeasure (SPCC) plan under the Oil Pollution Prevention regulation (40 CFR part 112) and which, because of their location, could reasonably expected to cause "substantial harm" to the environment by discharging oil into or on navigable waters or adjoining shorelines. Owners and operators of these facilities must prepare and submit an Facility Response Plan (FRP) to EPA. The criteria for a substantial harm facility include:

- Oil transfers over water to or from a vessel and a total storage capacity of greater than or equal to 42,000 gallons; or
- Total oil storage capacity of greater than or equal to one million gallons and meet one or more of the following harm factors: insufficient secondary containment; proximity to fish and wildlife and sensitive environments; discharge of oil could shut down a drinking water intake; and/or facility experienced a reportable oil discharge of 10,000 gallons or more in last 5 years; or
- Other factors considered by the Regional Administrator. (See 40 CFR 112.20(b)(1) and (f) for further information about the criteria for substantial harm.)

The specific private industry sectors subject to this action include, but are not limited to: (1) Petroleum Bulk Stations and Terminals (NAICS 42271); (2) Electric Power Generation, Transmission, and Distribution (NAICS 2211); (3) Gasoline Stations/Automotive Rental and Leasing (NAICS 4471/5321); (4) Heating Oil Dealers (NAICS 3112); (5) Transportation, Pipelines, and Marinas (NAICS 482–486/488112–48819/4883/48849/492/71393); (6) Grain and Oilseed Milling (NAICS 3112); (7) Manufacturing (NAICS 31–33); (8) Warehousing and Storage (NAICS 493); (9) Crude Petroleum and Natural Gas Extraction (211111); (10) Mining and Heavy Construction (NAICS 2121/2123/213114/213116/234); (11) Schools (NAICS 6111–6113; (12) Hospitals (622–623); (13) Crop and Animal Production (NAICS 111–112); and (14) Other Commercial Facilities (miscellaneous).

*Title:* Implementation of the Oil Pollution Act Facility Response Plan Requirements (40 CFR Part 112) (Renewal).

*ICR numbers:* EPA ICR Number 1630.10; OMB Control Number 2050–0135.

*ICR status:* This ICR is currently scheduled to expire on March 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The authority for EPA's FRP requirements is derived from section 311(j)(5) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20 and 112.21. All FRP reporting and recordkeeping activities are mandatory. This information collection request renewal has not substantively changed from the last ICR approval (March 31, 2008).

*Purpose of Data Collection*

An FRP will help an owner or operator identify the necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills through the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can greatly assist local emergency preparedness planning efforts. EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause significant and substantial harm to the environment in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill. (*See* 40 CFR 112.20(f)(3) for further information about the criteria for significant and substantial harm.)

*Response Plan Certification.* Under section 112.20(e), the owner or operator of a facility that does not meet the substantial harm criteria in section 112.20(f)(1) must complete and maintain at the facility the certification form contained in Appendix C to part 112.

*Response Plan Preparation.* Under section 112.20(a) or (b), the owner or operator of a facility that meets the "substantial harm" criteria in section 112.20(f)(1) must prepare and submit to the EPA Regional Administrator an FRP following section 112.20(h). Such a facility may be a newly constructed facility or may be an existing facility that meets paragraph (f)(1) as a result of a planned change (paragraph (a)(2)(iii)) or an unplanned change (paragraph (a)(2)(iv)) in facility characteristics. Under paragraph (c), the owner or operator may be required to amend the FRP.

*Response Plan Maintenance.* Under section 112.20(g), the owner or operator must periodically review the FRP to ensure consistency with the National Oil and Hazardous Substances Pollution Contingency Plan and Area Contingency Plans and update the plan to reflect changes at the facility. Under section 112.20(d), the facility owner or operator must revise and resubmit revised portions of the FRP after material changes at the facility. FRP changes that do not result in a material change in response capabilities shall be provided to the Regional Administrator as they occur. Periodic drills and exercises are required of the planholder to test the effectiveness of the FRP.

*Recordkeeping.* Under section 112.20(e), an owner or operator who determines that the requirements do not apply must certify and retain a record of this determination. An owner or operator who is subject to the requirements must keep the FRP at the facility (section 112.20(a)), keep updates to the FRP (section 112.20(d)(1) and (2)), and log activities such as discharge prevention meetings, response training, and drills and exercises (section 112.20(h)(8)(iv)).

*Number of Regulated Facilities.* Since approval of the current ICR (March 31, 2008), EPA has continued to maintain an inventory of facilities that have prepared and submitted an FRP to EPA. This national inventory of FRP facilities is periodically compiled by EPA headquarters based on data maintained by each of EPA's ten regional offices. The inventory was updated in April 2010 and comprises a total of 4,341 plan holders versus an inventory of 4,132 plan holders in the prior ICR renewal. Of the 4,341 planholders, 81 are Federal facilities, resulting in a universe of 4,260 non-Federal government FRP facilities. In the prior ICR renewal, a total of 3,942 non-Federal government FRP facilities were included. Since the number of affected facilities has not

changed substantively since the last renewal, EPA is not substantively revising the ICR supporting statement at this time, but is accepting comment on areas that may need revisions or updating.

*Burden Statement:* The average annual reporting and recordkeeping burdens for this collection of information on a newly regulated facility for which an FRP is not required (*i.e.,* facility where the owner or operator certifies that the facility does not meet the "substantial harm" criteria) is estimated to be 0.4 hour per year. The average annual reporting and recordkeeping burdens on a newly regulated facility for which an FRP is required (*i.e.,* first-year costs for plan development) are estimated at 240.1 hours per year. The average annual reporting and recordkeeping burdens on a facility for which the owner or operator is maintaining an FRP (*i.e.,* subsequent year costs for annual plan maintenance) are estimated at 99.7 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR supporting statement provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 22,574.

*Frequency of response:* Less than once per year.

*Estimated total annual burden hours:* 432,627 hours.

*Estimated total annual costs:* $17,427,828 includes $29,483 annualized capital costs.

**Are There Changes in the Estimates From the Last Approval?**

EPA estimates that there is no substantive change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This conclusion is based on EPA's current inventory of facilities that have submitted and are maintaining an FRP as per 40 CFR part 112. EPA has not amended the FRP regulation since the last ICR renewal that would affect the per-facility regulatory burden. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 19, 2011.

**Maryann Petrole,**

*Acting Director, Office of Emergency Management, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response.*

[FR Doc. 2011–2410 Filed 2–2–11; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

January 31, 2011.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 7, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://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 title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0819.

*Title:* Sections 54.400 through 54.417, Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions.

*Form Number:* FCC Form 497.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 251,400 respondents; 251,400 responses.

*Estimated Time per Response:* .084–1.5 hours.

*Frequency of Response:* On occasion, monthly, annual, and one-time

reporting requirements, third party disclosure requirement and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1, 4(i), 201–205, 214, 254 and 403.

*Total Annual Burden:* 49,386 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* The Commission is not requesting the respondents to submit confidential information to the FCC. If the Commission requests information that the respondent believes is confidential, they may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) during this comment period to obtain the three year clearance for a revision. The Commission is seeking OMB approval because the Commission revised the Annual Certification and Verification Letter used by Eligible Telecommunications Carriers (ETCs). The Commission is also merging the requirements of OMB Control Number 3060–1112 into this information collection (OMB Control Number 3060–0819). Upon OMB approval the Commission will retain this control number as the active collection in OMB's system. The low-income requirements are applicable to, and consistent with, this collection.

For background information, ETCs are permitted to receive universal service support reimbursement for offering certain services to qualifying low-income customers. The ETCs must file FCC Form 497 to solicit reimbursement. The Commission's rules also require collection of certain information to certify and subsequently verify that the beneficiary of low-income support is qualified to receive such support, and these rules contain recordkeeping requirements as well. Collection of this data is necessary for the administrator to accurately provide settlements for the low-income programs according to Commission rules.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–2382 Filed 2–2–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 28, 2011.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 4, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0394.

*Title:* Section 1.420, Additional Procedures in Proceedings for Amendment of FM, TV or Air-Ground Table of Allotments.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 30 respondents; 30 responses.

*Estimated Time per Response:* 0.33 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 10 hours.

*Total Annual Cost:* $9,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* 47 CFR 1.420(j) requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, the exact nature and amount of consideration received or promised, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five (5) days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses and provide the terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–2386 Filed 2–2–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 11–50]**

### Consumer Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; correction.

**SUMMARY:** The Federal Communications Commission published a document in the **Federal Register** on January 20, 2011 (76 FR 3633), announcing the rechartering of its Consumer Advisory Committee (hereinafter "the Committee"), and further requested applications for membership on the Committee. The Notice contained incorrect and/or omitted dates.

**Correction**

In the **Federal Register** of January 20, 2011, in FR Doc. 2011–1170, on page 3633, column 2, correct the **DATES** caption to read:

**DATES:** Applications should be received no later than 11:59 p.m. EST, February 11, 2011.

On page 3633, column 3, correct the first sentence of the **SUPPLEMENTARY INFORMATION** caption to read:

**SUPPLEMENTARY INFORMATION:** The rechartering of the Committee was announced by Public Notice dated and released January 11, 2011.

On page 3634, column 2, paragraph 2, correct the first sentence to read:

Applications should be received by the Commission no later than 11:59 p.m., EST, February 11, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Consumer and Governmental Affairs Bureau, 202–418–2809 (voice), 202–418–0179 (TTY), or e-mail *scott.marshal@fcc.gov*.

Federal Communications Commission.

**Joel Gurin,**

*Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. 2011–2402 Filed 2–2–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1 p.m. on Monday, February 7, 2011, to consider the following matters:

**SUMMARY AGENDA:** No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

**Discussion Agenda**

Memorandum and resolution re: Final Rule on Assessments, Dividends, Assessment Base, and Large Bank Pricing.

Memorandum and resolution re: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements.

Memorandum and resolution re: Notice of Proposed Rulemaking on Required Banker Training on Deposit Insurance Coverage.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html*.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: January 31, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–2445 Filed 2–1–11; 8:45 am]

**BILLING CODE P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 4363, Goldome, Buffalo, NY

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of termination of receivership.

*Notice is hereby given* that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Goldome, ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Goldome on May 31, 1991. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: February 3, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–2328 Filed 2–2–11; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS11–04]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

*Location:* FDIC—L. William Seidman Center, 3501 Fairfax Drive, Room B3124, Arlington, VA 22226.

*Date:* February 9, 2011.

*Time:* 10:30 a.m.

*Status:* Open.

**Matters To Be Considered**

*Summary Agenda*

January 12, 2011 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

*Discussion Agenda*

Appraisal Foundation October 2010 Grant Reimbursement Request.

Missouri Compliance Review.

*How To Attend and Observe an ASC Meeting*

E-mail your name, organization and contact information to *meetings@asc.gov*.

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste. 760, Washington, DC 20005. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. If that Monday is a Federal holiday, then your request must be received 4:30 p.m., ET on the previous Friday. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: January 31, 2011.

**James R. Park,**

*Executive Director.*

[FR Doc. 2011–2383 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS11–05]**

### Appraisal Subcommittee Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

*Location:* FDIC—L. William Seidman Center, 3501 Fairfax Drive, Room B3124, Arlington, VA 22226.

*Date:* February 9, 2011.

*Time:* Immediately following the ASC open session.

*Status:* Closed.

**Matters To Be Considered**

January 12, 2011 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: January 31, 2011.

**James R. Park,**

*Executive Director.*

[FR Doc. 2011–2389 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

ATS International Services, Inc. (NVO & OFF), 725 Opportunity Drive, St. Cloud, MN 56302, Officers: Rollis Anderson, President/CEO (Qualifying Individual), Joseph M. Goering, Vice President, Application Type: Add OFF Service.

Bahaghari Holdings, Inc. dba DL Lawin Cargo dba, Bahaghari Express Cargo (NVO), 761 Highland Place, San Dimas, CA 91773, Officer: Leandro R. Dinglasan, President/Secretary/CFO (Qualifying Individual), Application Type: License Transfer.

CBM Global Freight Corporation (NVO), 223 South Van Brunt Street, Suite 200, Englewood, NJ 07631, Officer: Seung (Brian) H. Hur, Vice President/Secretary (Qualifying Individual), Claudio Vazquez, President/Treasurer, Application Type: New NVO License.

Charity Cargo, LLC (NVO), 1423 Kaleilani Street, Pearl City, HI 96782. Officers: Jessie Luga, Member (Qualifying Individual), Estiven Ganal, Member, Application Type: New NVO License.

Four Points Ocean Inc. (NVO & OFF), 1460 Route 9 North, Suite 303, Woodbridge, NJ 07095, Officers: Joseph P. Felitto, President/Director/Treasurer (Qualifying Individual), Raymond Boudart, Vice President, Application Type: Add OFF Service.

Global Way International, Inc. (NVO), 17756 Palo Verde Avenue, Cerritos, CA 90703, Officer: James Wang, CFO/CEO/Secretary (Qualifying Individual), Application Type: New NVO License.

HD Intercargo, Inc. (NVO), 820 SW 17 Avenue, Miami, FL 33135, Officers: Karen I. Duarte, Secretary (Qualifying Individual), Herbeth F. Duarte, President, Application Type: New NVO License.

IFLN, LLC dba IFLN Shipping Line (NVO & OFF), 700 Rockmead Drive, #214, Kingwood, TX 77339, Officers: Michel VanLerberghe, President/Member (Qualifying Individual), Rocio Hidrobo, Vice President/Sec/Treas/Member, Application Type: License Transfer/Add NVO Service/QI Chg.

Interfreight Logistics Co., Ltd. (NVO & OFF), 22A Sunshine Island Bldg., Dongmen Nan Road, ShenZhen, GuangDong Province, China 518002, Officers: DeFang Kong, Secretary (Qualifying Individual), HuaRong Liu, President, Application Type: New NVO & OFF License.

Ironbound Global Logistics Limited Liability Company (NVO), 384 Market Street, Suite B, Newark, NJ 07105, Officers: Raymundo J. Barbaran, Member/Manager/COO (Qualifying Individual), Blanca Salas, Member/Manager/Secretary/CEO, Application Type: New NVO License.

Kuwait Shipping and Packaging Corporation (OFF), 3353 Third Avenue, Bronx, NY 10456, Officers: Daniel O. Adjei, President (Qualifying Individual), Rose Adjei, Secretary/Treasurer, Application Type: New OFF License.

Legend International Transport, LLC dba Prime Time Movers (NVO), 3310 Mandeville Canyon Road, Los Angeles, CA 90049, Officers:

Jacqueline Benabe, CFO (Qualifying Individual), Daniel Lerner, Manager, Application Type: New NVO License.

Malvar Freight Forwarding, LLC (NVO & OFF), 4141 NW. 36th Avenue, Miami, FL 33142, Officer: Alberto Diaz Rodriguez, Manager (Qualifying Individual), Application Type: License Transfer.

Missouri Sea and Air Services, Inc. (NVO & OFF), 500 Meijer Drive, #107, Florence, KY 41042, Officers: George S. Jernigan, Assistant Secretary (Qualifying Individual), Margaret Sears, President, Application Type: New NVO & OFF License.

Mohawk Customs & Shipping Corp. dba Mohawk Global Logistics (NVO & OFF), 152 Air Cargo Road, Suite 303, North Syracuse, NY 13212, Officers: Garard D. Grannell, President/CEO (Qualifying Individual), Michael Kuhn, Vice President, Sales & Marketing, Application Type: QI Change.

Outer Seaways, Inc. (NVO), 1315 Walnut Street, #1708A, Philadelphia, PA 19107, Officers: Richard Schultz, Vice President (Qualifying Individual), John J. O'Donnell, President, Application Type: New NVO License.

Raices Express Inc. (NVO & OFF), 1400 NW. 48th Place, Deerfield Beach, FL 33064, Officers: Rafael I. Santos, President/Secretary/Director (Qualifying Individual), Idelsa A. Santos, Vice President/Treasurer, Application Type: New NVO & OFF License.

Texas International Freight, LLC (OFF), 10142 Hanka Drive, Houston, TX 77043, Officer: Michael A. Dyll, President/CEO (Qualifying Individual), Application Type: New OFF License.

Trans Wagon Int'l (USA) Co., Ltd. (NVO & OFF), 20265 Valley Blvd., Suite B, Walnut, CA 91789, Officers: Nancy Y. Shen, Vice President, Chin-Tien Su, President/CEO/Secretary/CFO (Qualifying Individuals), Application Type: Add NVO Service.

WTO Express (U.S.A.) Corp. (NVO & OFF), 20265 Valley Blvd., Suite B, Walnut, CA 91789, Officers: Nancy Y. Shen, Vice President, Chin-Tien Su, President/CEO/Secretary/CFO Qualifying Individuals), Application Type: Add NVO Service.

UIA Worldwide Logistics, Inc. (NVO), 265 E. Redondo Beach Blvd., Gardena, CA 90248. Officers: Alvin Lin, President/CEO/Director (Qualifying Individual), Doris M. Ling, Director/Secretary/Treasurer/CFO, Application Type: QI Change.

UniGlobal Logistics LLC (NVO), 39 Old Ridgebury Road, Danbury, CT 06810. Officers: Robert H. Shellman, CEO (Qualifying Individual), Douglas I. Clark, President, Application Type: New NVO License.

Dated: January 31, 2011.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–2392 Filed 2–2–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 2011.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Mehrdad Elie,* Redwood City, California, individually, and as a group acting in concert with Mesfin Ayenew, Potomac, Maryland; David P. Como, Napa, California; Charles Turnbaugh, Baltimore, Maryland; Robert L. Gossard, Burlingame, California; and Terrance M. Davis, Dillon Beach, California; to acquire voting shares of HarVest BanCorp, Inc., Gaithersburg, Maryland, and thereby indirectly acquire voting shares of HarVest Bank of Maryland, Rockville, Maryland.

Board of Governors of the Federal Reserve System, January 31, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–2385 Filed 2–2–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 2011.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. Hana Financial Group Inc.,* Seoul, Korea; to acquire a controlling interest in Korea Exchange Bank, Seoul, Korea, and thereby indirectly acquire voting shares of KEB Financial Corp., New York, New York, and KEB Financial Corp., Los Angeles, California, and indirectly engage in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–2384 Filed 2–2–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Solicitation for Nominations for the National Vaccine Advisory Committee

**AGENCY:** Office of the Assistant Secretary for Health, Office of the

Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**Authority:** 42 U.S.C. 300aa–5, Section 2105 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The National Vaccine Program Office (NVPO), a program office within the Office of the Assistant Secretary for Health, DHHS, is soliciting nominations of qualified candidates to be considered for appointment as public members to the National Vaccine Advisory Committee (NVAC). The activities of this Committee are governed by the Federal Advisory Committee Act (FACA). Management support for the activities of this Committee is the responsibility of the NVPO.

Consistent with the National Vaccine Plan, the Committee advises and makes recommendations to the Assistant Secretary for Health in his capacity as the Director of the National Vaccine Program, on matters related to the Program's responsibilities. Specifically, the Committee studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States; recommends research priorities and other measures to enhance the safety and efficacy of vaccines. The Committee also advises the Assistant Secretary for Health in the implementation of Sections 2102 and 2103 of the PHS Act; and identifies annually the most important areas of government and non-government cooperation that should be considered in implementing Sections 2102 and 2103 of the PHS Act.

**DATES:** Nominations for membership on the Committee must be received no later than 5 p.m. EDT on April 4, 2011, at the address below.

**ADDRESSES:** All nominations should be mailed or delivered to Bruce G. Gellin, M.D., M.P.H., Executive Secretary, NVAC, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue, SW., Room 715–H, Hubert H. Humphrey Building, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** National Vaccine Program Office, Department of Health and Human Services, 200 Independence Avenue, SW., Room 715–H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5566; *nvpo@hhs.gov.* A copy of the Committee charter which includes the Committee's structure and functions as well as a list of the current membership can be obtained by contacting the National Vaccine Program Office or by accessing the NVAC Web site at *http://www.hhs.gov/nvpo/nvac.*

**SUPPLEMENTARY INFORMATION:**

*Committee Function, Qualifications, and Information Required:* As part of an ongoing effort to enhance deliberations and discussions with the public on vaccine and immunization policy, nominations are being sought for interested individuals to serve on the Committee as public members. Individuals selected for appointment to the Committee will serve as voting members. The Committee is composed of 15 public members, including the Chair, and two representative members. In accordance with the Committee charter, public members shall be selected from individuals who are engaged in vaccine research or the manufacture of vaccines, or who are physicians, members of parent organizations concerned with immunizations, representatives of State or local health agencies or public health organizations. Representative members shall be selected from the vaccine manufacturing industry who are engaged in vaccine research or the manufacture of vaccines. Individuals selected for appointment to the Committee can be invited to serve terms of up to four years.

All NVAC members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct authorized Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive honorarium for attending Committee meetings and to carry out other authorized Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive honorarium for the performance of these duties. This announcement is to solicit nominations of qualified candidates to fill positions on the NVAC that are scheduled to be vacated in the public member category. The positions are scheduled to be vacated in 2011.

**Nominations**

In accordance with the charter, persons nominated for appointment as members of the NVAC should be among authorities knowledgeable in areas related to vaccine safety, vaccine effectiveness, and vaccine supply. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable. Applications cannot be submitted by facsimile. The names of Federal employees should not be nominated for consideration of appointment to this Committee. The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made that a broad representation of geographic areas, gender, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of NVAC are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the

Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: January 28, 2011.

**Bruce Gellin,**

*Deputy Assistant Secretary, Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.*

[FR Doc. 2011–2372 Filed 2–2–11; 8:45 am]

**BILLING CODE 4150–44–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–11–0729]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Customer Surveys Generic Clearance for the National Center for Health Statistics (0920–0729 exp. 6/30/2009)—Reinstatement—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on "the extent and nature of illness and disability of the population of the United States." This is a reinstatement request for a generic approval from OMB to conduct customer surveys over the next three years.

As part of a comprehensive program, the National Center for Health Statistics (NCHS) plans to continue to assess its customers' satisfaction with the content, quality and relevance of the information it produces. NCHS will conduct voluntary customer surveys to assess strengths in agency products and services and to evaluate how well it addresses the emerging needs of its data users. Results of these surveys will be used in future planning initiatives.

The data will be collected using a combination of methodologies appropriate to each survey. These may include: Evaluation forms, mail surveys, focus groups, automated and electronic technology (*e.g.,* e-mail, Web-based surveys), and telephone surveys. Systematic surveys of several groups will be folded into the program. Among these are Federal customers and policy makers, State and local officials who rely on NCHS data, the broader educational, research, and public health community, and other data users. Respondents may include data users who register for and/or attend NCHS sponsored conferences; persons who access the NCHS Web site and the detailed data available through it; consultants; and others. Respondent data items may include (in broad categories) information regarding respondent's gender, age, occupation, affiliation, location, *etc.,* to be used to characterize responses only. Other questions will attempt to obtain information that will characterize the respondents' familiarity with and use of NCHS data, their assessment of data content and usefulness, general satisfaction with available services and products, and suggestions for improvement of surveys, services and products.

The resulting information will be for NCHS internal use. There is no cost to respondents other than their time to participate in the survey. The total estimated annualized burden is 1,640 hours.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of survey | Respondents | Number of respondents | Number of responses/ respondent | Average burden/response (in hours) |
|---|---|---|---|---|
| Questionnaire for conference registrants/ attendees. | Public/private researchers, Consultants, and others. | 3,000 | 1 | 10/60 |
| Focus groups | Public/private researchers, Consultants, and others. | 240 | 1 | 1 |
| Web-based | Public/private researchers, Consultants, and others. | 3,600 | 1 | 10/60 |
| Other customer surveys | Public/private researchers, Consultants, and others. | 1,200 | 1 | 15/60 |

Dated: January 26, 2011.

**Carol E. Walker,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–2420 Filed 2–2–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–11–11BS]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

"Characteristics of Mine Worker Resilience in Emergency Escape"—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH, under Public Law 91–173 as amended by Publ. L. 95–164 (Federal Mine Safety and Health Act of 1977) has the responsibility to conduct research to improve working conditions and to prevent accidents and occupational diseases in underground coal mining.

A mine emergency poses substantial psychological and emotional challenges for the miners and personnel who need to respond to an underground coal mining incident or escape from an underground mine. Psychological issues can continue to be a problem after the incident takes place, as evidenced by a number of suicides and loss of experienced mining and rescue personnel in the aftermath of mining disasters over the past decade. While attention has been paid to the products and technologies needed to prevent and respond to mine emergencies, the personal factors that influence resilience in emergency situations, especially those necessary for self-escape, have been largely overlooked.

Resilience has been defined in a number of ways; this task will initially define resilience as the psychological and social characteristics of an individual miner and mine crew that help them to withstand significant adversity and to "bounce back" after a trauma. The authors of *Strategies for Escape and Rescue from Underground Coal Mines* concluded that developing resilient miners, who are able to respond and self-escape if necessary, is needed to improve emergency response in the U.S. underground coal industry [Alexander, *et al.* 2010]. Furthermore, it is crucial to develop miners and mining crews who are equipped with the psycho-social resilience needed pre-, during, and post-event to support positive self-escape behaviors.

The goal of this task is to define and measure resiliency in underground coal miners and mine crews through a survey instrument, and to recommend ways to increase their resilience such that they are psychologically prepared to self-escape and can psychologically recover in a healthy manner after a mine emergency.

To accomplish this goal, NIOSH researchers will field test a measure of resiliency they have designed. A survey will be administered to 200 underground coal miners. The survey is designed to assess miners' resiliency. NIOSH will use the results of the survey to adapt and disseminate the measure. Eventually, the measure will provide data on miners' resiliency which, in the next phase of the task, will result in organizational interventions for a more psychologically resilient workforce. All participants will be between the ages of 18 and 65, currently employed, and living in the United States.

Findings will be used to improve the definition and measure of resilience in coal mining. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Number of respondents | Number of responses per respondent | Average burden response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Miners and Crew | 200 | 1 | 30/60 | 100 |
| Total | | | | 100 |

Dated: January 26, 2011.

**Carol E. Walker,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–2421 Filed 2–2–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–11–11BP]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol Walker, Acting CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Community-based Organization (CBO) Monitoring and Evaluation of WILLOW (CMEP–WILLOW)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC began formally partnering with CBOs in the late 1980s to expand the reach of HIV prevention efforts. CBOs were, and continue to be, recognized as important partners in HIV prevention

because of their history and credibility with target populations and their access to groups that may not be easily reached. Over time, CDC's program for HIV prevention by CBOs has grown in size, scope, and complexity to respond to changes in the epidemic, including the diffusion and implementation of Effective Behavioral Interventions (EBIs) for HIV prevention.

CDC's EBIs have been shown to be effective under controlled research environments, but there is limited data on intervention implementation and client outcomes in real-world settings (as implemented by CDC-funded CBOs). The purpose of CMEP–WILLOW is to (a) assess the fidelity of the implementation of the selected intervention at the CBO; and (b) improve the performance of CDC-funded CBOs delivering the WILLOW intervention by monitoring changes in clients' self-reported attitudes and beliefs regarding HIV and HIV transmission risk behaviors after participating in WILLOW. The project also plans to conduct process monitoring of the delivery of the intervention in terms of recruitment, retention, and data collection, entry, and management. Four CBOs will receive supplemental funding under PS 10–1003 over a five-year period to participate in CMEP–WILLOW.

CBOs will conduct outcome and process monitoring of the project between July 1, 2011 and June 30, 2015. They will recruit 400 women living with HIV who are 18 years of age and older, have known their positive HIV status for at least 6 months, and are enrolled in the WILLOW intervention to participate in CMEP–WILLOW. Each participant will complete a 20 minute, self administered, computer based interview prior to their participation in the WILLOW intervention and an 18 minute, self administered, computer based interview at two follow-up time points (90- and 180-days following the WILLOW intervention) to assess their HIV-related attitudes and behavioral risks. CBOs will be expected to retain 80% of these participants at both follow-up time points.

Throughout the project, funded CBOs will be responsible for managing the daily procedures of CMEP–WILLOW to ensure that all required activities are performed, all deadlines are met, and quality assurance plans, policies and procedures are upheld. CBOs will be responsible for participating in all CDC-sponsored grantee meetings related to CMEP–WILLOW.

Findings from this project will be primarily used by the participating CBOs. The CBOs may use the findings to (a) better understand if the outcomes are different across demographic and behavioral risk groups as well as agency and program model characteristics; (b) improve the future implementation, management, and quality of WILLOW; and (c) guide their overall HIV prevention programming for women living with HIV. CDC and other organizations interested in behavioral outcome monitoring of WILLOW or similar HIV prevention interventions can also benefit from lessons learned through this project.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondent | Form | Number of respondents | Number of responses per respondent | Average burden response (in Hours) | Total burden (in Hours) |
|---|---|---|---|---|---|
| General population | Screener | 400 | 1 | 2/60 | 13 |
| General population | Baseline Interview | 400 | 1 | 20/60 | 133 |
| General population | 90-day Follow-up Interview. | 320 | 1 | 18/60 | 96 |
| General population | 180-day Follow-up Interview. | 320 | 1 | 18/60 | 96 |
| Total | | | | | 338 |

Dated: January 26, 2011.

**Carol E. Walker,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–2423 Filed 2–2–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Help America Vote Act (HAVA) Voting Access Application and Annual Report.

*OMB No:* 0970–0327.

*Description:* This is a revision to include the application for the previously cleared Help America Vote Act (HAVA) Annual report, Payments to States and Units of Local Government (42 U.S.C. 15421).

The Help America Vote Act (HAVA) application to States and Units of Local Government is required by Federal statute and regulation. Each State or Unit of Local Government must prepare an application to receive funds under the Help America Vote Act (HAVA), Public Law 107–252, Title II, Subtitle D, Part 2, Sections 261 to 265, Payments to States and Units of Local Government to Assure Access for Individuals with Disabilities (42 U.S.C. 15421–25). The application is provided in writing to the Administration for Children and Families, Administration on Developmental Disabilities.

An annual report is required by Federal statute (the Help America Vote Act (HAVA) of 2002, Public Law 107–252, Section 261, Payments to States and Units of Local Government, 42 U.S.C. 15421). Each State or Unit of Local Government must prepare and submit an annual report at the end of every fiscal year. The report addresses the activities conducted with the funds provided during the year. The information collected from the annual report will be aggregated into an annual profile of how States have utilized the funds and establish best practices for election officials. It will also provide an overview of the State election goals and accomplishments and permit the Administration on Developmental Disabilities to track voting progress to monitor grant activities.

**Respondents**

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| HAVA Annual Report | 50 | 1 | 24 | 1,200 |
| HAVA Application | 55 | 1 | 50 | 2,750 |
| Estimated Total Annual Burden Hours | | | | 3,950 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 25, 2011.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–2256 Filed 2–2–11; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[OMB No. 0970–0076]**

### Submission for OMB Review; Comment Request

*Title:* Low Income Home Energy Assistance Program (LIHEAP) Grantee Survey.

*Description:* The LIHEAP Grantee Survey is an annual data collection activity, which is sent to grantees of the 50 states and the District of Columbia administering the Low Income Home Energy Assistance Program (LIHEAP). The survey is mandatory in order that national estimates of the sources and uses of LIHEAP funds can be calculated in a timely manner; a range can be calculated of State average LIHEAP benefits; and maximum income cutoffs for four-person households can be obtained for estimating the number of low-income households that are income eligible for LIHEAP under the State income standards.

The need for the above information is to provide the Administration and Congress with fiscal estimates in time for hearings about LIHEAP appropriations and program performance. The information also is included in the Department's annual LIHEAP Report to Congress. Survey information also will be posted on the Office of Community Services' LIHEAP Web site for access by grantees and other interested parties.

*Respondents:* 50 States and the District of Columbia.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| LIHEAP | | | | |
| Grantee | 51 | 1 | 3.5 | 178.50 |
| Survey | | | | |
| Estimated Total Annual Burden Hours | | | | 178.50 |

**Additional Information**

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

**OMB Comment**

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: January 25, 2011.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–2257 Filed 2–2–11; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0598]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Type A Medicated Articles

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by March 7, 2011.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0154. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Current Good Manufacturing Practice Regulations for Type A Medicated Articles—21 CFR Part 226 (OMB Control Number 0910–0154)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including type A medicated articles. A type A medicated article is a feed product containing a concentrated drug diluted with a feed carrier substance. A type A medicated article is intended solely for use in the manufacture of another type A medicated article or a type B or type C medicated feed. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease or for growth promotion and feed efficiency.

Statutory requirements for cGMPs for type A medicated articles have been codified in part 226 (21 CFR part 226). Type A medicated articles which are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act. Under part 226, a manufacturer is required to establish, maintain, and retain records for type A medicated articles, including records to document procedures required under the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (*i.e.,* batch and stability testing) and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of type A medicated articles. The information could also prove useful to FDA in investigating product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 226 to determine whether or not the systems used by manufacturers of type A medicated articles are adequate to assure that their medicated articles meet the requirements of the FD&C Act as to safety and also meet the article's claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act.

The respondents for type A medicated articles are pharmaceutical firms that manufacture both human and veterinary drugs, those firms that produce only veterinary drugs, and commercial feed mills.

In the **Federal Register** of November 26, 2010 (75 FR 72827), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | Number of recordkeepers | Annual frequency per recordkeeping | Total annual records | Hours per record | Total hours |
|---|---|---|---|---|---|
| 226.42 | 115 | 260 | 29,900 | .75 | 22,425 |
| 226.58 | 115 | 260 | 29,900 | 1.75 | 52,325 |
| 226.80 | 115 | 260 | 29,900 | .75 | 22,425 |
| 226.102 | 115 | 260 | 29,900 | 1.75 | 52,325 |
| 226.110 | 115 | 260 | 29,900 | .25 | 7,475 |
| 226.115 | 115 | 10 | 1,150 | .5 | 575 |
| Total | | | | | 157,550 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for record preparation and maintenance is based on Agency communications with industry. Other information needed to calculate the total burden hours (*i.e.,* manufacturing sites, number of type A medicated articles being manufactured, *etc.*) are derived from Agency records and experience.

Dated: January 28, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–2355 Filed 2–2–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0023]**

### Draft Guidance for Industry on "Target Animal Safety and Effectiveness Protocol Development and Submission," Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#215) entitled "Target Animal Safety and Effectiveness Protocol Development and Submission."

The purpose of this document is to provide sponsors guidance in preparation of study protocols for review by the Center for Veterinary Medicine (CVM), Office of New Animal Drug Evaluation (ONADE), to reduce the time to protocol concurrence.

**DATES:** Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 19, 2011.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Angela Clarke, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8318; e-mail: *angela.clarke@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a draft guidance for industry (#215) entitled "Target Animal Safety and Effectiveness Protocol Development and Submission." The purpose of this document is to provide sponsors guidance in preparation of study protocols for review by the CVM, ONADE, to reduce the time to protocol concurrence. This guidance makes recommendations to aid in the preparation of protocols used to generate data to support new animal drug applications, specifically target animal safety and substantial evidence of effectiveness.

#### II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

#### III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance have been approved under OMB Control No. 0910–0032 (expiration date 04/30/2011).

#### IV. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: January 28, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–2315 Filed 2–2–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2000–D–1542; formerly Docket No. 00D–0892]**

### Draft Guidance on Positron Emission Tomography Drug Applications—Content and Format for New Drug Applications and Abbreviated New Drug Applications; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "PET Drug Applications—Content and Format for NDAs and ANDAs." The draft guidance is intended to assist manufacturers of certain positron emission tomography (PET) drugs in submitting new drug applications (NDAs) or abbreviated new drug applications (ANDAs) in accordance with the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and FDA regulations. This draft guidance revises the draft guidance entitled "Draft Guidance for Industry on the Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products; Availability," issued on March 10, 2000. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public meeting to assist applicants in preparing NDAs or ANDAs for fludeoxyglucose (FDG) 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection used in PET imaging.

**DATES:** Although you can comment on any guidance at any time (*see* 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 4, 2011.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6164, Silver Spring, MD 20993–0002, 301–796–3416.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled "PET Drug Applications—Content and Format for NDAs and ANDAs." This draft guidance revises the draft guidance entitled "Draft Guidance for Industry on the Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products; Availability," issued on March 10, 2000. The revised guidance is being issued again as a draft for comment because FDA's perspective has changed significantly since issuance of the March 2000 draft guidance.

The draft guidance is intended to assist the manufacturers of certain PET drugs—fludeoxyglucose (FDG) F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection—in submitting NDAs and ANDAs in accordance with the FD&C Act and FDA regulations. The draft guidance explains that to continue marketing these PET drugs for clinical use, manufacturers of these drugs must submit NDAs of the type described in section 505(b)(2) of the FD&C Act (21 U.S.C. 355(b)(2)) or ANDAs under section 505(j) of the FD&C Act by December 12, 2011. The draft guidance further states when submission of a 505(b)(2) application or ANDA is appropriate and describes the information that manufacturers of these PET drugs should include in each type of application.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the submission of NDAs and ANDAs for PET drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: January 28, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–2314 Filed 2–2–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0060]**

### Positron Emission Tomography; Notice of Public Meeting; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting to assist applicants in preparing new drug applications (NDAs) or abbreviated new drug applications (ANDAs) for fludeoxyglucose (FDG) 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection used in positron emission tomography (PET) imaging. By December 12, 2011, FDA expects all producers of PET drugs in commercial clinical use to submit applications for marketing approval. FDA recognizes that many PET drug producers are unfamiliar with the drug approval process. Accordingly, FDA is holding this public meeting to discuss the drug approval process and FDA's general inspection process. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a revised draft guidance for industry entitled "PET Drug Applications—Content and Format for NDAs and ANDAs" that will be used at the meeting to explain the drug approval process.

**DATES:** The meeting will be held on March 2, 2011, from 8:30 p.m. to 5 p.m. *See* section IV of this document for information on how to register for and attend the meeting. Submit either electronic or written comments on this document by March 7, 2011.

**ADDRESSES:** The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503, Silver Spring, MD 20993–0002.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Giaquinto, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, rm. 6164, Silver Spring, MD 20993–0002, 301–796–3416, FAX: 301–847–8752, e-mail: *PETDrugs@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 21, 1997, President Clinton signed the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (FDAMA) into law. Section 121(c) of FDAMA directs FDA to regulate PET drugs. Section 121 requires FDA to develop appropriate procedures for the approval of PET drugs as well as current good manufacturing practice (CGMP) requirements for such drugs; to consult with patient advocacy groups, professional associations, manufacturers, and persons licensed to make or use PET drugs in the process of establishing these procedures and requirements; and to not require the submission of NDAs or ANDAs for compounded PET drugs that are not adulterated as described in the Federal Food, Drug, and Cosmetic Act (the FD&C Act) for a period of 4 years after the date of enactment of FDAMA or 2 years after the date FDA adopts special approval procedures and CGMP

requirements for PET drugs, whichever is longer.

Beginning in 1997, FDA took a series of actions to regulate PET drugs.

- The Agency conducted several public meetings with various representatives of an industry trade association, the Academy for Molecular Imaging (formerly the Institute for Clinical PET (ICP)), and other interested persons to discuss FDA proposals for PET drug approval procedures and CGMP requirements. Because certain PET drugs have been used clinically for a number of years, FDA conducted its own review of the published literature [1] to evaluate the safety and effectiveness of the PET drugs in widespread use for certain indications to facilitate the process of submitting applications for these products.
- The Agency discussed its preliminary findings on the safety and effectiveness of FDG F 18 injection (for the assessment of malignancy as well as left ventricular myocardial viability) and ammonia N 13 injection (for assessing myocardial perfusion) with the ICP and other interested persons at public meetings on November 17, 1998, and February 18 and 19, 1999.
- On June 28 and 29, 1999, the Agency presented its findings to its Medical Imaging Drugs Advisory Committee (Advisory Committee). The Advisory Committee concluded that FDG F 18 injection and ammonia N 13 injection can be considered safe and effective for the indications noted previously, although it recommended some revisions to the wording of the indications proposed by FDA.
- In a notice published in the **Federal Register** of March 10, 2000 (65 FR 12999), FDA presented its findings of safety and effectiveness for the PET drugs studied for certain indications and described the types of applications that can be submitted for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection used in PET imaging. These findings fulfill the requirement to develop appropriate approval procedures for these PET drugs.
- In the **Federal Register** of April 1, 2002, FDA published a preliminary draft proposed CGMP regulation (67 FR 15344) and a draft guidance on CGMP requirements (67 FR 15404) for public comment; in the **Federal Register** of September 20, 2005, FDA published a proposed rule (70 FR 55038) and revised draft guidance (70 FR 55145), to solicit additional public input; in the **Federal Register** of December 10, 2009 (74 FR 65409), after carefully considering all public input, FDA published a final CGMP regulation, triggering the 2-year time period for PET drug producers to submit an NDA or ANDA for any PET drug used clinically.

FDA is in the process of establishing a time line for completion of the review of PET drug applications and approval determinations. PET drug application submissions must be received by the Agency on or before December 12, 2011. Applicants may continue to use a PET drug during the time of our NDA or ANDA review. FDA intends to exercise enforcement discretion regarding unapproved PET drugs while submissions are reviewed. However, FDA expects that by December 9, 2015, all PET drugs in commercial clinical use (*i.e.,* not used under a Radioactive Drug Research Committee or an investigational new drug application (IND)) will be used under approved applications and does not intend to exercise enforcement discretion beyond that date.

## II. PET Guidances

Elsewhere in this issue of the **Federal Register**, FDA is making available a revised draft guidance for industry entitled "PET Drug Applications—Content and Format for NDAs and ANDAs." The draft guidance provides background information on the regulation of PET drugs; makes recommendations to help producers decide whether to submit an NDA or ANDA for their PET drug; includes a description of the content and format for both an NDA and an ANDA; and provides text that may be used in the applications.

More information on CGMP requirements for PET drugs may be found in the guidance for industry entitled "PET Drugs—Current Good Manufacturing Practice (CGMP)" issued December 2009, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM070306.pdf*.

## III. Purpose and Scope of the Meeting

The purpose of this meeting is to assist applicants in preparing NDA and ANDA submissions for specific PET drugs: FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection. FDA will present information designed to assist PET drug producers with the entire application process. FDA expects to discuss the following topics at the public meeting:

- Whether to submit an NDA or ANDA,
- Preparing and submitting an NDA,
- Preparing and submitting an ANDA,
- Bioequivalence requirements,
- Labeling,
- User fees,
- Drug Master Files,
- Compliance with CGMPs, and
- INDs.

The Office of Critical Path Programs is preparing a separate training session on electronic submission of applications and electronic drug registration and listing for PET drug producers. The training will be offered via webinar and will be made available at several different times. Therefore, these topics will not be addressed at the March 2, 2011, meeting. For more information on this training and its availability, please contact Elizabeth Giaquinto (*see* **FOR FURTHER INFORMATION CONTACT**).

## IV. Registration and Attendance

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating, therefore early arrival is encouraged. Attendance is free and will be on a first-come, first-served basis. For more information on meeting registration, contact Elizabeth Giaquinto (*see* **FOR FURTHER INFORMATION CONTACT**).

If you need special accommodations because of a disability, please contact Elizabeth Giaquinto (*see* **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

A live Web cast of this meeting will be available on the Agency's Web site at *https://collaboration.fda.gov/petdrugs/* on the day of the meeting. For more information on the Web cast and Connect Pro meeting, please contact Elizabeth Giaquinto (*see* **FOR FURTHER INFORMATION CONTACT**).

## V. Comments

Regardless of attendance at the public meeting, interested persons may submit to the Division of Docket Managements (*see* **ADDRESSES**) either electronic or written comments on the topics discussed in this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

## VI. Transcripts

Please be advised that as soon as a transcript is available, it will be

[1] As stated in FDA guidance for industry entitled "*Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products,*" FDA may, in certain circumstances, rely on published literature alone to support the approval of a new drug product under section 505 of the FD&C Act (21 U.S.C. 355).

accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: January 28, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–2313 Filed 2–2–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Environmental Health Sciences Council.

*Date:* February 16–17, 2011.

*Open:* February 16, 2011, 8:30 a.m. to 2:45 p.m.

*Agenda:* Discussion of program policies and issues.

*Place:* National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Closed:* February 16, 2011, 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Open:* February 17, 2011, 8:30 a.m. to 3:30 p.m.

*Agenda:* Discussion of program policies and issues.

*Place:* National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Gwen W. Collman, PhD, Interim Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, 615 Davis Drive, KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to technical difficulties associated with electronic formatting.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Responses to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: January 28, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–2394 Filed 2–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, February 9, 2011, 10:30 a.m. to February 9, 2011, 2 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on January 5, 2011, 76 FR 572.

The meeting will be held at the same place, but the time has changed to 1 p.m. to 4 p.m. Francois Boller, PhD will now be the Scientific Review Officer for this meeting. The meeting is closed to the public.

Dated: January 28, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–2380 Filed 2–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development, Special Emphasis Panel, Maternal Fetal Medicine Units Network.

*Date:* February 16, 2011.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, 5B01D, Rockville, MD 20852. (Telephone Conference Call.)

*Contact Person:* Sherry L. Dupere, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. 301–451–3415. *duperes@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 28, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–2377 Filed 2–2–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs", as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

**Instrumented Initial Testing Facilities (IITF)**

None.

**Laboratories**

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory.)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210. 615–255–2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053. 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056. 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center.)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876. (Formerly: Dynacare Kasper Medical Laboratories.)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (Formerly:

Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory.)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7891x7.
Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858–643–5555.
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084. 800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304. 800–877–2520. (Formerly: SmithKline Beecham Clinical Laboratories.)
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x1276.
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421. 800–442–0438.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166. 305–593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: January 26, 2011.

**Elaine Parry,**

*Director, Office of Management, Technology, and Operations, SAMHSA.*

[FR Doc. 2011–2369 Filed 2–2–11; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Notice of Adjustment of Statewide Per Capita Indicator for Recommending a Cost Share Adjustment

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that the statewide per capita indicator for recommending cost share adjustments for major disasters declared on or after January 1, 2011, through December 31, 2011, is $127.

**DATES:** This notice applies to major disasters declared on or after January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Pursuant to 44 CFR 206.47, the statewide per capita indicator that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the indicator is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2011, through December 31, 2011, the qualifying indicator is $127 per capita of State population.

This adjustment is based on an increase of 1.5 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2010. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 14, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–2360 Filed 2–2–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2008–0010]**

### National Fire Academy Board of Visitors; Notice of Meeting

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee Management; Notice of Open Federal Advisory Committee Meeting.

**SUMMARY:** The National Fire Academy Board of Visitors will meet on February 22, 2011.

**DATES:** The teleconference will take place Tuesday, February 22, 2011, from 1 p.m. to 3 p.m., EST. Comments must be submitted by Tuesday, February 15, 2011. Members of the public may also participate, in person, by coming to the National Emergency Training Center, Building H, Room 300. Emmitsburg, Maryland.

**ADDRESSES:** Members of the public who wish to obtain the call-in number, access code, and other information for participation in the public meeting should contact Roxane Strayer as listed under the **FOR FURTHER INFORMATION CONTACT** caption by February 18, 2011, as the number of teleconference lines is limited and available on a first-come, first served basis. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Roxane Strayer as listed under the **FOR FURTHER INFORMATION CONTACT** caption by February 18, 2011. Comments must be identified by docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA–RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail:* Roxane Strayer, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

*Instructions:* All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Roxane Strayer, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1642, fax (301) 447–1173, and e-mail *roxane.strayer@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will hold a meeting for purposes of electing a Chair and Vice Chair for the upcoming year, discussion regarding status of Subcommittees, new course developments in the following curriculum areas: Emergency Medical Services; Fire Prevention: Management; Fire Prevention: Technical; Hazardous Materials; and Fire Fighter Health and Safety, course revisions in the following curriculum areas: Executive Fire Officer Program; Management Science; Fire, Arson and Explosives Investigation; Fire Prevention: Management; Fire Prevention: Technical; Fire Prevention: Public Education; and Emergency Medical Services, new hiring introductions, DHS/Non-DHS Committee Reports affecting curriculum to include Underwriters Laboratories Fire Council and DHS Interagency Board, the status of deferred maintenance and capital improvements on the NETC campus, to include FY 2011 Budget Request/FY 2012 Budget Planning, as well as a public comment period. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in their judgment, facilitate the orderly conduct of business. The committee welcomes public comments prior to the teleconference. Please note that the meeting may end early if all business is completed.

### 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, contact Roxane Strayer as soon as possible.

Dated: January 28, 2011.

**Glenn A. Gaines,**

*Acting United States Fire Administrator, United States Fire Administration, Federal Emergency Management Agency.*

[FR Doc. 2011–2323 Filed 2–2–11; 8:45 am]

**BILLING CODE 9111–45–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5397–N–03]**

**RIN 2502–ZA05**

### Federal Housing Administration (FHA): Temporary Exemption From Compliance With FHA's Regulation on Property Flipping Extension of Exemption

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces that FHA is extending the availability of the temporary waiver of its regulation that prohibits the use of FHA financing to purchase single family properties that are being resold within 90 days of the previous acquisition, until December 31, 2011. This waiver, which was issued in January 2010, took effect for all sales contracts executed on or after February 1, 2010, and is set to expire on February 1, 2011. Prior to the waiver, a mortgage was not eligible for FHA insurance if the contract of sale for the purchase of the property that is the subject of the mortgage is executed within 90 days of the prior acquisition by the seller and the seller does not come under any of the exemptions to this 90-day period that are specified in the regulation.

As a result of the high foreclosures that have been taking place across the nation, FHA, through the regulatory waiver, encourages investors that specialize in acquiring and renovating properties to renovate foreclosed and abandoned homes with the objective of increasing the availability of affordable homes for first-time and other purchasers and helping to stabilize real estate prices as well as neighborhoods and communities where foreclosure activity has been high. While the waiver is available for the purpose of stimulating rehabilitation of foreclosed and abandoned homes, the waiver is applicable to all single family properties being resold within the 90-day period after prior acquisition, and was not limited to foreclosed properties. Additionally, the waiver is subject to certain conditions, and eligible mortgages must meet these conditions to take advantage of the waiver. The waiver is not applicable to mortgages insured under HUD's Home Equity Conversion Mortgage (HECM) Program.

On May 21, 2010, HUD published a notice that solicited public comment on the waiver, and specifically the conditions to which the waiver is subject. This notice issued in today's

edition of the **Federal Register** not only announces the extension of HUD's waiver of its property flipping regulations, but also responds to the public comments submitted in response to the May 21, 2010, notice. HUD considered the public comments but makes no changes in response to these comments. The waiver is therefore extended without change. Although no changes are made to the conditions to which the waiver is subject, this notice also includes guidance on the waiver conditions in response to questions that have arisen from time to time during the first year in which the waiver was made available. Additionally, this notice again welcomes public comment on the waiver.

**DATES:** *Effective Date:* February 1, 2011 through December 31, 2011.

*Comment Due Date:* April 4, 2011.

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

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

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

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

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Karin B. Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In this extension of the waiver, HUD repeats the background, as provided in the May 21, 2010 (75 FR 28632), that led to HUD's decision to issue the waiver.

Section 203.37a(b)(2) of HUD's regulations (24 CFR 203.37a(b)(2)) establishes FHA's rule on property flipping and this regulatory section provides that FHA will not insure a mortgage for a single family property if the contract of sale is executed within 90 days of the acquisition of the property by the seller. Section 203.37a(c) lists the sales transactions that are exempt from this rule. The exempt transactions include, for example, sales by HUD of real estate-owned (REO) properties under HUD's regulations in 24 CFR part 291, sales by another Federal agency of REO properties, sales of properties by nonprofit organizations that have been approved to purchase and resell HUD REO properties, and sales by State- and Federally-charted financial institutions and government sponsored enterprises, to name a few.

Property "flipping" refers to the practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often the result of a lender's collusion with the appraiser. Most property flipping occurs within a matter of days after acquisition, and usually with only minor cosmetic improvements, if any. In an effort to preclude this predatory lending practice with respect to mortgages insured by FHA, HUD issued a final rule on May 1, 2003 (68 FR 23370) that provides in 24 CFR 203.37a that FHA will not insure a mortgage if the contract of sale for the purchase of the property that is the subject of the mortgage is executed within 90 days of the prior acquisition by the seller and the seller does not come under any of the exemptions to this 90-day period that are specified in § 203.37a(c).

In a final rule published on June 7, 2006 (71 FR 33138), HUD expanded the exceptions contained in § 203.37a(c) to the 90-day time restrictions to include such transactions as sales of single family properties by government-sponsored enterprises (GSEs), State- and Federally-chartered financial institutions, nonprofits organizations approved to purchase HUD Real Estate-Owned (REO) single family properties at a discount with resale restrictions, local and state governments and their instrumentalities, and, upon announcement by HUD through issuance of a notice, sales of properties in areas designated by the President as Federal disaster areas.

The downturn in the housing market over the past few years has led to a rapid rise of homeowners defaulting on mortgages, and consequently an increase in foreclosed homes. A variety of measures to avoid foreclosures have been initiated at the Federal, State and local level, most notably the Administration's Home Affordable Modification Program. Despite these efforts to keep families in their homes, foreclosures continue to remain high and not only do foreclosures affect the families that lost their homes, but they affect neighborhoods and communities. While HUD continues its efforts to help homeowners remain in their homes, through waiver of its regulation on property flipping, HUD seeks to help stabilize neighborhoods and communities.

As noted in its May 21, 2010, notice, HUD undertook similar waiver action in a narrower context in 2009, regarding HUD's Neighborhood Stabilization Program (NSP). NSP, a temporary program authorized by the Housing and Economic Recovery Act 2008 (Public Law 110–289, approved July 30, 2008), was established for the purpose of stabilizing communities that have suffered from foreclosures and abandonment, by allocating funds through a formula to States and units of general local government, for the

purchase and redevelopment of foreclosed and abandoned homes and residential properties. HUD's waiver of its regulation on property flipping for NSP removed an impediment to the purchase of affordable homes that had been rehabilitated and sold under this program.

With the home foreclosure rate remaining high across the nation, HUD determined, early in 2010, that a temporary waiver of this regulation on a nationwide basis, subject to certain conditions, may contribute to stabilizing real estate prices and neighborhoods that have been heavily impacted by foreclosures, and may facilitate the sale and occupancy of foreclosed homes that have been rehabilitated by making the mortgages of such homes eligible for FHA mortgage insurance.

During the first year in which the waiver was made available, HUD believes that the waiver has made such a contribution and is therefore extending the waiver until December 31, 2011. As more fully discussed in the appendix to this notice, the waiver has enabled FHA to insure 17,114 mortgages that would not have been eligible otherwise for FHA insurance. In addition, overall HUD real estate owned (REO) purchases and investor purchases have increased by 20 and 25 percent, respectively. For the loans that FHA insured during the first year of the waiver, FHA compared the credit profile of 90-day property flip loans with other loan purchases (less HECM) to determine if the credit profiles were similar. FHA 90 day property flip loans and other purchase loans are almost identical from a credit perspective.

For 2011, FHA expects its foreclosure inventory to increase by 50 percent. Home prices declined for a third month (including distressed sales) by 3.93 percent in October 2010, compared to a year ago. The distressed sale share remains at 28 percent. The shadow inventory (90+ delinquencies, foreclosures and REOs not listed for sale) is estimated between 2 to 4 million units. As a result, the housing inventory is expected to remain elevated for some time. HUD provides a more detailed discussion of its assessment of granting the waiver in 2010, in the appendix to this notice.

While the waiver remains available for the purpose of stimulating rehabilitation of foreclosed and abandoned homes for another calendar year, the waiver continues to remain applicable to all properties being resold within the 90-day period after prior acquisition. The waiver is not limited to the resale of foreclosed properties.

## II. Discussion of the Public Comments Received in Response to the May 21, 2010, Notice

In the May 21, 2010, notice, HUD solicited comments from industry, potential purchasers, and other interested members of the public on the conditions that must be met for the waiver to be provided. The public comment period closed June 21, 2010, and eight public comments were received in response. After careful consideration of the comments, HUD decided to make no changes to the waiver eligibility conditions. For the convenience of the readers, the waiver eligibility conditions are set forth in Section III, followed by guidance on these conditions in Section IV.

The following presents a summary of the significant issues raised by the comments in response to the May 21, 2010, notice, and HUD's responses.

*Comment: Support for waiver.* The majority of the commenters supported the waiver. These commenters wrote that the anti-flipping regulation delays bringing affordable properties back on the market. Several of the commenters requested that FHA make the exemption permanent for transactions that meet the eligibility criteria specified in the notice.

*HUD Response.* HUD appreciates the support expressed by these commenters, and agrees that the waiver will help to stabilize neighborhoods and communities. With respect to those commenters advocating that the exemption be made permanent, HUD is not prepared at this time to permanently remove the resale "property flipping" restrictions from its regulation.

*Comment: Opposition to waiver.* Two commenters expressed the view that the waiver was not in the interest of homebuyers or the American taxpayer. The commenters wrote that the waiver of the property flipping guidelines will hurt homebuyers by permitting investors to purchase and quickly resell properties at inflated value "with little more than fresh paint and a general cleaning."

*HUD Response.* As noted, HUD will grant waivers only if the mortgagee can meet certain specified conditions designed to address the concerns raised by the commenters. Among other conditions, the mortgagee must demonstrate that the purchase transaction is arms-length in nature, that the property has not been the subject of prior "flipping," and that the property was fairly and openly marketed for sale. Further, the mortgagee must justify and document any sales price that exceeds the seller's acquisition costs by 20 percent or more.

*Comment: Clarify seller acquisition cost.* Several commenters urged that HUD clarify that the seller's acquisition cost excludes any costs of rehabilitation. The commenters wrote that the 20 percent limit does not account for the high cost of the extensive repairs frequently needed to place abandoned or foreclosed properties on the market.

*HUD Response.* The waiver eligibility conditions sufficiently address the concerns raised by the commenters. Specifically, the eligibility conditions do not prohibit resales that exceed 20 percent of the seller's acquisition costs but, rather, simply require the mortgagee to justify and document the reasons for the increase in value. As noted above, such reasons may include the completion of sufficient legitimate renovation, repair, and rehabilitation work.

## III. Eligibility for Waiver of 24 CFR 203.37a(b)(2)

To be eligible for the waiver of the Property Flipping Rule, an FHA-approved mortgagee must meet the following conditions:

1. All transactions must be arms-length, with no identity of interest between the buyer and seller or other parties participating in the sale transaction. Some ways that the lender can ensure that there is no inappropriate collusion or agreement between parties, are to assess and determine the following:

a. The seller holds title to the property;

b. Limited liability companies, corporations, or trusts that are serving as sellers were established and are operated in accordance with applicable State and Federal law;

c. No pattern of previous flipping activity exists for the subject property as evidenced by multiple title transfers within a 12 month time frame (chain of title information for the subject property can be found in the appraisal report);

d. The property was marketed openly and fairly, through a multiple listing service (MLS), auction, for sale by owner offering, or developer marketing (any sales contracts that refer to an "assignment of contract of sale," which represents a special arrangement between seller and buyer may be a red flag).

2. In cases in which the sale of the property is greater than 20 percent above the seller's acquisition cost, an FHA-approved mortgagee is eligible for the waiver only if the mortgagee:

a. Justifies the increase in value by retaining in the loan file supporting

documentation and/or a second appraisal, which verifies that the seller has completed sufficient legitimate renovation, repair, and rehabilitation work on the subject property to substantiate the increase in value or, in cases where no such work is performed, the appraiser provides appropriate explanation of the increase in property value since the prior title transfer; and

b. Orders a property inspection and provides the inspection report to the purchaser before closing. The mortgagee may charge the borrower for this inspection. The use of FHA-approved inspectors or 203(k) consultants is not required. The inspector must have no interest in the property or relationship with the seller, and must not receive compensation for the inspection for any party other than the mortgagee. Additionally, the inspector may not: Compensate anyone for the referral of the inspection; receive any compensation for referring or recommending contractors to perform any repairs recommended by the inspection; or be involved with performing any repairs recommended by the inspection. At a minimum, the inspection must include:

i. The property structure, including the foundation, floor, ceiling, walls and roof;

ii. The exterior, including siding, doors, windows, appurtenant structures such as decks and balconies, walkways and driveways;

iii. The roofing, plumbing systems, electrical systems, heating and air conditioning systems;

iv. All interiors; and

v. All insulation and ventilation systems, as well as fireplaces and solid fuel-burning appliances.

3. Only forward mortgages are eligible for the waiver. Mortgages insured under HUD's HECM program are ineligible for the waiver.

## IV. Guidance on the Conditions for Waiver Eligibility

*A. Seller's Acquisition Cost*

The seller's acquisition cost is the purchase price which the seller paid for the property, and the following costs (if paid by the seller):

- Closing costs, plus
- Prepaid costs, including commissions.

The seller's acquisition cost does not include the cost of repairs that the seller makes to the property.

*B. Justification and Documentation of Increase in Value*

If the resale price of the property is greater than 20 percent above the seller's acquisition cost, the property will be eligible for an FHA-insured mortgage only if the Mortgagee justifies the increase in value. The Mortgagee must verify that the seller has completed sufficient legitimate renovation, repair, or rehabilitation work on the subject property to substantiate the increase in value by retaining supporting documentation in the loan file or by providing a second appraisal.

- If the Mortgagee uses a second appraisal:
  - An FHA roster appraiser must perform the appraisal in compliance with all FHA appraisal reporting requirements.
  - The Mortgagee may not use an appraisal done for a conventional loan even if it was completed by an FHA roster appraiser.
  - The Mortgagee may not charge the cost of the second appraisal to the homebuyer.

If the Mortgagee has ordered a second appraisal to document the increase in value, the Mortgagee must not use this appraisal for case processing and must not enter it into FHA Connection.

*C. Property Inspection Report*

If the resale price of the property is greater than 20 percent above the seller's acquisition cost, the property will be eligible for an FHA-insured mortgage only if the Mortgagee obtains a property inspection and provides the inspection report to the buyer before closing. The borrower, lender, or mortgage broker (if one is involved in the transaction) may order the property inspection. The lender or mortgage broker may charge the borrower for this inspection.

*D. Repairs*

If the inspection report notes that repairs are required because of structural or "health and safety" issues, those repairs must be completed prior to closing. After completion of repairs to address structural or "health and safety" issues, the inspector must conduct a final inspection to determine if the repairs have been completed satisfactorily and eliminated the structural or "health and safety" issues. The borrower, lender, or mortgage broker may order the final inspection.

## V. Compliance With the Paperwork Reduction Act

The information collection requirements applicable to this waiver have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control No. 2502–0059. 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.

## VI. Period of Waiver Eligibility

The waiver that is the subject of this notice remains effective beyond February 1, 2011, through December 31, 2011, for all sales contracts executed on or after February 1, 2010, the availability date provided by the issuance of the waiver in January 2010, unless extended or withdrawn by HUD.

By notice, HUD shall notify the public of any extension or withdrawal of this waiver. If as a result of this waiver, there is a significant increase in defaults on FHA-insured mortgages and an increase in mortgage insurance claims that are attributable to mortgages insured as a result of exercise of this waiver authority, HUD may withdraw this waiver immediately.

## VII. Solicitation of Public Comments

HUD again welcomes comments on the conditions specified in this notice for eligibility for waiver of its regulation on property flipping.

Dated: January 28, 2011.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

## Appendix

**Assessment of Exemption From Compliance With FHA's Regulation on Property Flipping in Calendar Year 2010**

On February 1, 2010, FHA issued a one year waiver of regulation 24 CFR 203.37a(b)(2) that prohibits the use of FHA financing to purchase properties that are being resold within 90 days of the prior acquisition by the seller. At the time the waiver was issued, the housing market was still experiencing high rates of foreclosure which had started over the previous two year period and were expected to continue until market conditions improved. The housing market continues to experience high rates of foreclosures, and as of October, 2010, the housing supply for existing homes is at 10.5 months. In addition, FHA expects its foreclosure inventory to increase by 50 percent in 2011. Home prices declined for a third month (including distressed sales) by 3.93 percent in October 2010, compared to a year ago. The distressed sale share remains at 28 percent. The shadow inventory (90+ delinquencies, foreclosures and REOs not listed for sale) is estimated between 2 to 4 million units. As a result, the housing inventory is expected to remain elevated for some time. Investors and homeowners are finding value in purchasing REOs in the current market. Investors are more likely (52

percent) to purchase damaged properties versus first-time or current homeowners (Inside Mortgage Finance, June 2010). Since the waiver went into effect, overall HUD real-estate owned (REO) purchases and investor purchases have increased by 20 and 25 percent, respectively.

The waiver implemented various controls to help mitigate the risks associated with 90 day property flips. The transaction has to be arms-length with no pattern of previous flipping. If the sale of the property is 20 percent above the seller's acquisition cost, the increase in value must be justified with:

• A 2nd appraisal *and/or* supporting documentation justifying the increase in value

-AND-

• Property inspection report to be ordered by the Lender.

In addition, if the sale of the property is 20 percent above the seller's acquisition cost, the loan was targeted for a Post Endorsement Technical Review (PETR). To ensure FHA's risk controls are adequate, FHA analyzed and compared 90-day property flipping loan data and other purchase loan data in three key areas: (1) EPDs; (2) Credit Profile; and (3) Property Defects.

1. Early Payment Defaults (EPDs) are defined as a 90-day delinquency within the first 6 payment cycles. There are currently 5 EPD loans for 90-day property flip loans. Below is a comparison of FHA 90-day flip loans to other purchase mortgages (less HECM) endorsed between 2/1/10 and 10/31/10. It should be noted that it is too early to draw any meaningful conclusions concerning EPDs since the waiver was implemented in 2/1/10.

| | Flips | Purchases |
|---|---|---|
| Loans | 17,114 | 1,200,650 |
| EPDs | 5 | 1,742 |
| Percentage | 0.03% | 0.15% |

2. FHA insured 16,999 loans under this waiver from 2/1/10 through 9/31/10. FHA compared the credit profile of 90-day property flip loans with other loan purchases (less HECM) to determine if the credit profiles were similar. FHA 90-day property flip loans and other purchase loans are almost identical from a credit perspective.

| Loan type | Average front end ratio | Average back end ratio | Average total score |
|---|---|---|---|
| 90-day Property Flip | 27.92 | 40.86 | 694 |
| Other Purchases | 26.96 | 40.58 | 698 |

3. Of the 16,999 loans, FHA reviewed 833 (4.9 percent) 90-day property flip loans through its Post Endorsement Technical Review (PETR) process from 2/1/10 through 9/31/10. FHA compared the percentage of loans rated Unacceptable for Valuation Review to PETR Reviews and to the 90-day property flip loan population. Currently, 90-day property flip loans have substantially more Unacceptable Valuation ratings compared to other purchase loans (less HECM). The percentage of unacceptable valuation reviews to PETR reviews for 90-day property flipping loans is 47.54 percent. However, the majority of these Unacceptable Valuation reviews are the result of documentation compliance issues (*i.e.* missing inspection report, 2nd Appraisal, Termite Report). It should be noted that these are new requirements for the mortgagee and FHA. The mortgagees were interpreting the controls inconsistently/incorrectly. In addition, these loans were originated this year and the process of resolving documentation issues can often take several months. Actual property defects (issues with the actual property such as holes in the walls, faulty wiring, *etc.*) are limited to 10.08 percent which is comparable to FHA's other purchase loans.

| Loan type | Percentage of unacceptable valuation reviews to PETR reviews | Percentage of unacceptable valuation reviews to loan population |
|---|---|---|
| 90-day Property Flip | 10.08% (Property Defects) | .49% |
| Other Purchases | 9.79% | .39% |

[FR Doc. 2011–2434 Filed 2–2–11; 8:45 am]
**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Supplemental Environmental Impact Statement for the Proposed Campo Regional Landfill Project on the Campo Indian Reservation, San Diego County, CA

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of cancellation.

**SUMMARY:** This notice announces that the Bureau of Indian Affairs (BIA) as lead agency, in cooperation with the Campo Band of Mission Indians (Campo Band), Campo Environmental Protection Agency (CEPA) and the U.S. Environmental Protection Agency (EPA), intends to cancel all work on a Supplemental Environmental Impact Statement (SEIS) for the BIA Federal action of approving an amended lease and amended sublease to allow for the proposed Campo Regional Landfill Project (Proposed Action) to be located on the Campo Indian Reservation, San Diego County, California.

**DATES:** This cancellation is effective March 1, 2011. Written comments must arrive by February 28, 2011.

**ADDRESSES:** You may mail or hand carry written comments to Amy Dutschke, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** John Rydzik, (916) 978–6051.

**SUPPLEMENTARY INFORMATION:** The BIA is canceling work on the SEIS because the Campo Band of Mission Indians, by Tribal resolution, informed the BIA that the Tribe terminated the amended lease with Muht-Hei (MHI) and amended sublease between MHI and BLT Enterprises, Inc. (BLT), of Oxnard, California, to develop the Campo Regional Landfill Project (Proposed Action). There is no Federal action of amended lease and amended sublease approval for BIA consideration. The Notice of Intent to prepare the SEIS, which included a description of the proposed action, was published in the **Federal Register** on November 8, 2005 (70 FR 67738–67739). The Notice of Availability of the Draft SEIS was published in the **Federal Register** on February 26, 2010 (75 FR 8986–8988).

**Public Comment Availability**

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday,

except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and section 46.305 of the Department of Interior Regulations (43 CFR part 46), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: January 20, 2011.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2011–2426 Filed 2–2–11; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAC09000 L58740000.EU0000.LXSS008B0000; CACA 50168 06]**

### Notice of Realty Action: Modified Competitive Bid Sale of Public Lands in Santa Cruz County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) Hollister Field Office proposes to sell a parcel of public land consisting of approximately 12.55 acres in Santa Cruz County, California, for not less than the appraised fair market value of $53,000. The sale will be conducted as a modified competitive bid auction, whereby only the adjoining landowners would have the opportunity to submit written sealed bids to purchase the public land.

**DATES:** Written comments regarding this proposed sale must be received by the BLM on or before March 21, 2011. The adjoining landowners have until 3 p.m. Pacific Standard Time April 4, 2011 to submit sealed bids to the BLM Hollister Field Office at the address listed below. Sealed bids will be opened on April 5, 2011, which will be the sale date.

**ADDRESSES:** Written comments concerning the proposed sale should be sent to the Field Manager, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023. Sealed bids must also be submitted to this address.

**FOR FURTHER INFORMATION CONTACT:** Christine Sloand, Realty Specialist, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, or phone (831) 630–5022.

**SUPPLEMENTARY INFORMATION:** The following public land is proposed for sale in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended (43 U.S.C. 1713 and 1719):

**Mount Diablo Meridian**

T. 10S., R. 2E.,
Sec. 20, lots 1, 2, and 9.

The area described contains 12.55 acres, more or less, in Santa Cruz County.

The public land was originally identified as suitable for disposal in the 1984 BLM Hollister Resource Management Plan (RMP) and remains available for sale under the 2007 Hollister RMP revision, and is not needed for any other Federal purpose. The public land proposed for sale lacks legal access and is isolated from other public lands. The BLM's purpose in selling the land is to dispose of land that is difficult and uneconomic to manage as part of the public lands. The BLM proposes to limit bidding to the adjoining landowners because the land lacks legal access and has no utility except to be used as part of an adjoining parcel. The BLM's objective in limiting bidding to the adjoining landowners is to encourage the assemblage of the public land with an adjoining parcel of private land, which is the highest and best use of the public land according to an appraisal approved by the Department of the Interior Office of Valuation Services. Under the regulations 43 CFR 2711.3–2, the BLM may limit bidding to certain persons when the authorized officer determines it is necessary to recognize equitable considerations or public policies. In this case, the BLM believes that it is good public policy to promote the assemblage of the public land with adjoining private land because that is the highest and best use of the public land and it is equitable to provide each adjoining landowner an opportunity to purchase the public land. There are three landowners adjoining the public land; Mr. and Mrs. Burch, Mr. and Mrs. Bradford and Mr. and Mrs. Reid. The BLM has completed a mineral potential report which concluded there are no known mineral values in the land proposed for sale. The proposed sale would include the conveyance of both the surface and mineral interests of the United States.

On February 3, 2011, the above described land will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. The BLM will no longer accept land use applications affecting the identified public lands, except 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 2802.15 and 2886.15. The temporary segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on February 4, 2013, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The land would not be sold until at least April 4, 2011. Any patent issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A condition that the conveyance be subject to all valid existing rights of record;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands;

4. Additional terms and conditions that the authorized officer deems appropriate.

The BLM will send the adjoining landowners of record an Invitation For Bid (IFB). Adjoining landowners must follow the instructions in the IFB to participate in the bidding process. Sealed bids must be for not less than the Federally approved fair market value of $53,000. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management, for 10 percent of the amount of the bid. A bid to purchase the land will constitute an application for conveyance of the Federal mineral interest, and in conjunction with the final payment, the purchaser will be required to pay a $50 nonrefundable filing fee for the conveyance of the mineral interests. If more than one sealed bid is submitted for the same high bid amount, the high bidders will be notified and allowed to submit

additional sealed bids. The highest qualifying bid will be declared the high bid and the high bidder will receive written notice. The BLM will return checks submitted by unsuccessful bidders by U.S. mail or in person on the day of the sale. The successful bidder must submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale, in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Failure to submit the full bid price prior to, but not including the 180th day following the day of the sale, will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. No exceptions will be made. The BLM may accept or reject any or all offers, or withdraw the land from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable law or is determined to not be in the public interest.

Under Federal law, the public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of California. If not sold, the land described in this Notice may be identified for sale later without further legal notice and may be offered for sale by sealed bid, Internet auction, or oral auction. In order to determine the value, through appraisal, of the land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Detailed information concerning the proposed land sale including the sale procedures and conditions, appraisal, planning and environmental documents, and a mineral report are available for review at the location identified in **ADDRESSES** above.

Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Hollister Field Manager (*see* **ADDRESSES** above) on or before March 21, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask 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(a) and (c).

**Karla Norris,**

*Associate Deputy State Director, Natural Resources.*

[FR Doc. 2011–2362 Filed 2–2–11; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMA01000 L14300000.KD0000; NMNM 123371]**

### Notice of Realty Action: Competitive Sale of Public Lands in Sandoval County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to offer, by competitive sale, a parcel of Federally owned land near Golden, New Mexico, containing approximately 130.56 acres. The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), respectively, and the BLM land sale regulations. The purpose of the sale is to dispose of lands which are difficult and uneconomic to manage. The sale will be conducted in Albuquerque, New Mexico, as a competitive sealed bid auction in which interested bidders must submit written sealed bids equal to or greater than the appraised fair market value of the land.

**DATES:** Interested parties may submit comments regarding the proposed sale to the Field Manager, Rio Puerco Field Office, on or before March 21, 2011. Sealed bids must be received no later than 4:30 p.m., Mountain Standard Time on April 5, 2011. Other deadline dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified in "ADDITIONAL INFORMATION" section of this Notice. The BLM will open the sealed bids at the BLM, Rio Puerco Field Office, 435 Montaño NE, Albuquerque, New Mexico, at 10 a.m. on April 6, 2011 which will be the sale date.

**ADDRESSES:** Written comments regarding the proposed sale, as well as sealed bids to be submitted to the BLM, should be sent to the Field Manager, BLM, Rio Puerco Field Office, 435 Montaño, NE., Albuquerque, New Mexico 87107. Additional information including bid forms, times, and bidding procedures will be available in an Invitation for Bids available in the Rio Puerco Field Office. More detailed information regarding the proposed sale and the lands involved, including maps and current appraisal may be reviewed during normal business hours between 7:45 a.m. and 4:30 p.m. at the Rio Puerco Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Connie Maestas, Realty Specialist, (505) 761–8907 or via e-mail at *cmaestas@nm.blm.gov.*

**SUPPLEMENTARY INFORMATION:** The following public land, situated in Sandoval County, New Mexico, has been authorized and designated for disposal in the BLM Rio Puerco Resource Management Plan, dated November 1986, maintained and reprinted in October 1992, and, therefore, meets the disposal qualifications of Section 203 of the FLPMA (90 Stat. 2750, 43 U.S.C. 1701 and 1713).

**New Mexico Principal Meridian**

T. 12 N., R. 6 E.,

Sec. 23, lots 1 to 4, inclusive.

The area described contains 130.56 acres in Sandoval County, according to the official

plat of the survey of the said land, on file in the BLM.

This land will be offered through competitive sale procedures pursuant to 43 CFR 2711.3–1. The purpose of this sale is to dispose of a tract of land that will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land. The sale of this land outweighs other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership. The land is intermingled with State and private land. No significant resource values will be affected by this transfer.

In the event of a sale, conveyance will be made of surface interest only; the United States will retain all mineral rights. Any patent issued will contain the following numbered reservations, covenants, terms, and conditions:

The land will be conveyed with a reservation of a right-of-way to the United States for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

All minerals, including coal, will be reserved to the United States with the right to prospect for or mine, and remove the minerals. The land will be conveyed subject to:

1. Valid existing rights-of-way and easements.

2. An appropriate indemnification clause protecting the United States from claims arising out of the lessees/patentee's use, occupancy, or operations on the leased/patented lands.

3. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the parcel of land proposed for sale; and the conveyance of any such parcel will not be on a contingency basis. To the extent required by law, all such parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9620(h)).

4. The patentee, by accepting the patent and covenants, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractor, or lessees, or any third party, arising out of, or in connection with, the patentee's use, occupancy or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and its employees, agents, contractors or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property that has already resulted or does hereafter result in: (1) Violations of Federal, State and local laws and regulations that are now, or may in the future, become applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s) as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substance(s) or waste(s); or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

*Additional Information:* Sealed bids shall be considered only if received at the BLM Rio Puerco Field Office, 435 Montaño NE., Albuquerque, New Mexico, by no later than 4:30 p.m., MST April 4, 2011. Bids must be made by the principal or his duly qualified agent. Each bid must include a completed sealed bid form and be accompanied by a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the BLM, for 10 percent of the amount of the bid. Bids must be for not less than the Federally approved FMV. Each bid shall be enclosed in a sealed envelope marked on the lower front left corner with the BLM Serial Number, NMNM 123371, and the sale date. In the event that two or more sealed bids are received containing valid bids of the same amount, the high bidders will be notified and allowed to submit additional sealed bids. If not sold, the lands described in this Notice may be identified for sale later without further legal notice and may be offered for sale by sealed bid or oral auction.

The highest qualifying bid received will be publicly declared the high bid and the high bidder will receive written notification by the authorized officer. The successful bidder must submit the remainder of the full bid price within 180 calendar days of the sale date in the form of a certified check, money order, bank draft, or cashier's check, made payable in U.S. dollars to the BLM. Personal checks will not be accepted. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. If you were not declared the high bidder, your check will be returned to you at the sale upon proof of identification. If you do not attend the sale, your check will be returned according to your instructions.

Federal law requires all bidders to be United States citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity legally capable of conveying and holding lands or interests therein under the laws of the State of New Mexico. Certification of qualification, including citizenship, corporation or partnership, must accompany the bid deposit. The Certification of Qualification form is available at the BLM, Rio Puerco Field Office, 435 Montaño, NE., New Mexico 87107, or by calling (505) 761–8700.

To establish the fair market value for the subject public land through appraisal, certain assumptions have been made of the attitudes and limitations of the land and potential effects of local regulations and policies on potential future land uses.

Through publication of this Notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of all existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such and future access acquisition will be the responsibility of the buyer.

No warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale. Furthermore, conveyance of the

subject lands will not be on a contingency basis.

Termination of Segregation: On April 18, 2010, this parcel was segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. The segregative effect shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation, or on April 11, 2011, whichever occurs first.

*Public Comment:* Interested parties may submit written comments, in letter format, regarding the proposed sale to the Field Manager, Rio Puerco Field Office, up to 45 days after publication of this Notice in the **Federal Register**. Facsimiles, e-mails and telephone calls are unacceptable means for the transmission of comments. Any adverse comments will be reviewed by the New Mexico BLM State Director, or other authorized official, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of Interior. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commentor to have their name and/or address withheld from public release will be honored to the extent permissible by law.

**Authority:** 43 CFR 2711.1–2.

**Edwin Singleton,**

*District Manager.*

[FR Doc. 2011–2361 Filed 2–2–11; 8:45 am]

**BILLING CODE 4310–AG–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–DPOL–0111–6600; 0004–SYP]**

## Meeting of the National Park System Advisory Board

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, and Parts 62 and 65 of title 36 of the Code of Federal Regulations, that the National Park System Advisory Board will meet April 12–13, 2011, in San Francisco, California. The agenda will include the review of proposed actions regarding the National Historic Landmarks Program and the National Natural Landmarks Program. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the Board meeting and upon request may address the Board concerning an area's national significance.

**DATES:** (a) Written comments regarding any proposed National Historic Landmarks matter or National Natural Landmarks matter listed in this notice will be accepted by the National Park Service until April 4, 2011. (b) The Board will meet on April 12–13, 2011.

*Location:* The meeting will be held in room Golden Gate C of the Argonaut Hotel, Beach and Jefferson Streets, San Francisco, California 94109, telephone 415–563–0800.

*Information:* (a) For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears Smith, Office of Policy, National Park Service, 1201 I Street, NW., 12th Floor, Washington, DC 20005, telephone 202–354–3955, e-mail *Shirley_S_Smith@nps.gov.* (b) To submit a written statement specific to, or request information about, any National Historic Landmarks matter listed below, or for information about the National Historic Landmarks Program or National Historic Landmarks designation process and the effects of designation, contact J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street, NW., (2280), Washington, DC 20240, e-mail *Paul_Loether@nps.gov.* (c) To submit a written statement specific to, or request information about, any National Natural Landmarks matter listed below, or for information about the National Natural Landmarks Program or National Natural Landmarks designation process and the effects of designation, contact Dr. Margaret Brooks, Program Manager, National Natural Landmarks Program, National Park Service, 225 N. Commerce Park Loop, Tucson, Arizona 85745, e-mail *Margi_Brooks@nps.gov.*

**SUPPLEMENTARY INFORMATION:** On April 12, the Board will tour national park sites in the San Francisco area. On April 13, the Board will convene its business meeting at 8:30 a.m., and adjourn at 5 p.m. During the course of the two days, the Board will be addressed by National Park Service Director Jonathan Jarvis and will be briefed by other National Park Service officials regarding education, partnerships, and youth programs; deliberate and make recommendations concerning National Historic Landmarks Program and National Natural Landmarks Program proposals; and receive status briefings on matters pending before committees of the Board.

### A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered in the morning session of the business meeting, during which the Board may consider the following:

*Nominations for New NHL Designations*

Delaware

- Lightship *Overfalls,* Lewes, DE.

District of Columbia

- Congressional Cemetery, Washington, DC.

Kansas

- Western Branch, National Home for Disabled Volunteer Soldiers, Leavenworth, KS.

Maine

- Olson House, Cushing, ME.

Minnesota

- Grand Mound, Koochiching County, MN.
- Split Rock Light Station, Lake County, MN.

New York

- Woodlawn Cemetery, Bronx, NY.

North Dakota

- Lynch Quarry Site, Dunn County, ND.

Ohio

- Pennsylvania Railroad Depot and Baggage Room, Dennison, OH.

Oklahoma

- Chilocco Indian Agricultural School, Kay County, OK.
- Platt National Park, Murray County, OK.

Oregon

- Aubrey Watzek House, Portland, OR.

Pennsylvania

- Arch Street Friends Meeting House, Philadelphia, PA.

• Kuerner Farm, Delaware County, PA.
• Schaeffer House, Schaefferstown, PA.

South Dakota

• Battle Mountain Branch, National Home for Disabled Volunteer Soldiers, Hot Springs, SD.

Tennessee

• Mountain Branch, National Home for Disabled Volunteer Soldiers, Johnson City, TN.

Utah

• Mountain Meadows Massacre Site, Washington County, UT.

Wisconsin

• Northwestern Branch, National Home for Disabled Volunteer Soldiers, Milwaukee, WI.

*Proposal To Withdraw NHL Designation*

• *President* (Riverboat), St. Elmo, IL.

*Proposed Amendments to Existing NHL Designations*

• USS *Constellation,* Baltimore, MD. (Updated Documentation)
• John B. Gough House, Boylston, MA. (Additional Documentation)
• Harry S. Truman Historic District, Independence, MO. (Additional Documentation and Boundary Change)
• Medicine Wheel/Medicine Mountain, Bighorn County, WY. (Updated Documentation, Boundary Change, and Name Change)

**B. National Natural Landmarks (NNL) Program**

NNL Program matters will be considered in the morning session of the business meeting, during which the Board may consider the following:

*Nominations for New NNL Designations*

Arizona

• Barfoot Park, Cochise County, AZ.

Colorado

• Hanging Lake, Garfield County, CO.

Oregon

• Round Top Butte, Jackson County, OR.
• The Island, Jefferson County, OR.

Washington

• Kahlotus Ridgetop, Franklin County, WA.

*Proposed Amendments to Existing NNL Designation*

Colorado

• Golden Fossil Areas, Jefferson County, CO (An addition to the existing Morrison Fossil Area NNL, including a boundary change and name change).

The Board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations as necessary to allow the Board to complete its agenda within the allotted time. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Draft minutes of the meeting will be available for public inspection in the 12th floor conference room, 1201 I Street, NW., Washington, DC, about 12 weeks after the meeting.

Dated: January 31, 2011.

**Bernard Fagan,**

*Chief, Office of Policy.*

[FR Doc. 2011–2436 Filed 2–2–11; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 28, 2011, two Consent Decrees in *United States* v. *Stephen C. Lyon, et al.,* Civil Action No. 1: 07–CV–00491–LJO–MJS, were lodged with the United States District Court for the Eastern District of California, Fresno Division which, together, resolve all of the claims asserted in the Complaint as to all remaining defendants.

Both Consent Decrees resolve claims brought by the United States, on behalf of the United States Environmental Protection Agency ("EPA") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9607, *et. seq.,* related to the releases and threatened releases of hazardous substances at the Modesto Groundwater Contamination Superfund Site ("Site") in Modesto, California.

The first proposed Consent Decree resolves claims against Defendants Stephen C. Lyon, Suzanne S. Lyon, Russell R. Tonda, and Dianne M. Tonda, and the second proposed Consent Decree resolves claims against Defendant the Estate of Shantilal Jamnadas. The proposed Consent Decrees require the defendants to reimburse the United States $1,525,000 and $650,000 respectively for past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Lyon, et al.*, D.J. Ref. 90–11–3–08737.

The Consent Decrees may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–2375 Filed 2–2–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 15, 2010, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|---|
| Gamma Hydroxybutyric Acid (2010). | I |
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |

The company plans to manufacture the listed controlled substances in bulk for sale in bulk to its customers. The Thebaine (9333) will also be used to manufacture other controlled substances in bulk which will also be for sale in bulk to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 4, 2011.

Dated: January 26, 2011.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2011–2325 Filed 2–2–11; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—State Jail Inspector: Training Curriculum Revision and Update

**AGENCY:** National Institute of Corrections, U.S. Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

**SUMMARY:** The National Institute of Corrections (NIC) Jails Division is seeking applications for the revision and update of its curriculum for State jail inspector training. The project will be for a 12-month period and will be completed in conjunction with the NIC Jails Division. The awardee will work closely with NIC staff on all aspects of the project. To be considered, applicants must demonstrate, at a minimum, (1) in-depth knowledge of the variety, scope, legal standing, and application of State jail inspections, (2) experience working with the nation's State jail inspectors, (3) experience in conducting jail inspections, and (4) expertise and experience in developing curriculums based on adult learning principles as reflected in the Instructional Theory into Practice (ITIP) model.

**DATES:** Applications must be received by 4 p.m. (EDT) on Monday, February 14, 2011.

**ADDRESSES:** Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as postal mail is at times delayed due to security screening.

Applicants who wish to hand-deliver their applications should bring them to 500 First Street, NW., Washington, DC 20534, and dial 202–307–3106, ext. 0, at the front desk for pickup.

Faxed or e-mailed applications will not be accepted; however, electronic applications can be submitted via *http://www.grants.gov.*

*For Further Information:* A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov.*

*Questions and Answers:* Questions about this project and the application procedures should be directed to Jim T. Barbee, Correctional Program Specialist, National Institute of Corrections. Questions must be e-mailed to Mr. Barbee at *jbarbee@bop.gov.* Mr. Barbee will respond by e-mail. Only questions received by 4 p.m. (EDT) on Thursday, February 10, 2011 will be answered. Answers to these questions will appear on NIC's Web site under the "Corrections Community" blog attached to this announcement.

**SUPPLEMENTARY INFORMATION:**

*Background:* Of the nation's 50 States, 33 States have some form of minimum jail standards or inspections. The legal standing of State standards vary significantly among the States as does the rigor of the inspection process. The responsibility for jail standards and inspections differs from State to State, ranging from State agencies, to independent commissions, to nonprofit professional associations. However, the common factor among most State jail standard efforts is usually the minimal resources allocated for the function. In 2002, NIC developed a no-cost jail inspector training program in support of States' efforts to improve jail conditions and operations through standards and inspections. Improvement of the nation's jails is consistent with NIC's mission. Today, NIC would like to update the existing curriculum and associated training materials to reflect changes in the field. The existing NIC jail inspector training materials (*e.g.,* ITIP-based curriculum, participant manuals, PowerPoint presentations, program evaluations, and other materials) to be revised/updated are available for review at *http://www.nicic.gov* under the "Corrections Community" blog attached to this announcement.

*Scope of Work:* The cooperative agreement awardee will create and conduct an online survey to obtain feedback from former trainees, draft a revised curriculum for the jail inspector training program, pilot the curriculum, and revise the curriculum based on an assessment of the pilot. The final curriculum will include a program description (overview), detailed narrative lesson plans, presentation slides for each lesson plan, a participant manual that follows the lesson plans, and a process and outcome evaluation (developed in concert with NIC's Research and Evaluation Division). The successful applicant will demonstrate an ability to maximize the use of multimedia resources, including blended learning technology and strategies, if required, to enhance the adult learning experience of jail inspectors. The curriculum will be designed according to the ITIP model for adult learners (refer to the ITIP toolkit located at *http://nicic.gov/Library/018534*). Lesson plans will be in a format that NIC provides.

A schedule of activities for this project should include, at a minimum, the following:

*Meetings:* The cooperative agreement awardee will attend up to five meetings. The initial meeting with the NIC project manager will focus on the project overview and preliminary planning. This will take place shortly after the cooperative agreement is awarded.

The awardee will also meet up to two times (these may be Web-based meetings) with NIC staff and up to five administrators of jail inspection agencies or subject matter experts (SMEs). The purpose of these meetings is to identify clearly the primary duties of State jail inspectors. Note that the SMEs will be selected by NIC, but all costs associated with their meeting attendance will be paid by the awardee.

The awardee will meet up to two times with NIC staff during the revision of the draft curriculum. One meeting will be devoted to drafting a framework for the curriculum, including module topics, performance objectives, estimated timeframes, sequencing, and potential instructional strategies. The other meeting will focus on lesson plan development, review, and revision and other project issues as they arise.

*Development of Draft Curriculum:* The cooperative agreement awardee will draft the full curriculum in consultation with NIC staff. The awardee will then send it to NIC staff and the selected SMEs for review.

NIC will choose the SMEs, but the awardee will reimburse them for time and expenses related to the review. The draft curriculum must be submitted sufficiently in advance of the pilot to ensure there is time to make any required changes.

*Curriculum Pilot:* The draft curriculum will be piloted to determine needed refinements. Although the length of the program will be determined by the content, the awardee should project that the program will last no more than 5 days. The curriculum may also incorporate blended learning strategies to accompany the in-class training.

The awardee, in conjunction with NIC, will identify up to 3 trainers for the program. The awardee will contract with and pay all costs associated with retaining the trainers, including travel, lodging, meals, fees, and miscellaneous expenses. NIC will secure training space at its academy in Colorado, select program participants, notify participants of selection and program details, supply training equipment, and provide for participant lodging, meals, and transportation. The awardee will provide final training materials in an appropriate timeframe and media format (*e.g.,* doc, xls, avi, jpeg, mp3) as determined by NIC and in consultation with its writer/editor, webmaster, and audiovisual staff.

*Curriculum Revision and Final Product:* Based on the pilot and discussions with NIC staff, the awardee will revise the curriculum. The awardee will submit the revised curriculum to NIC staff for final review and make any remaining changes. The awardee will submit the completed curriculum to NIC in hard copy (1) and on disk in Word, PowerPoint, or other acceptable formats as designated by NIC. The awardee is responsible for securing all copyright releases in writing in addition to achieving 508 format compliance.

*Document Preparation:* For all awards in which a document will be a deliverable, the awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the "General Guidelines for Cooperative Agreements," which will be included in the award package.

*Application Requirements:* An application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.,* July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in this announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*).

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *http://www.grants.gov.*

The narrative portion of the application should include, at a minimum: A brief paragraph indicating the applicant's understanding of the project's purpose; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a statement or chart of measurable project milestones and timelines for the completion of each milestone; a description of the qualifications of the applicant organization and a resume for the principal and each staff member assigned to the project (including instructors) that documents relevant knowledge, skills, and abilities to complete the project; and a budget that details all costs for the project, shows consideration for all contingencies for the project, notes a commitment to work within the proposed budget, and demonstrates the ability to reasonably provide deliverables according to schedule.

The narrative portion of the application should not exceed ten double-spaced typewritten pages, excluding attachments related to the credentials and relevant experience of staff.

In addition to the narrative and attachments, the applicant must submit one full sample curricula developed by the primary curriculum developer(s) named in the application. The sample curriculum must include lesson plans, presentation slides, and a participant manual.

**Authority:** Pub. L. 93–415.

*Funds Available:* NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount should not exceed $73,000.

*Eligibility of Applicants:* An eligible applicant is any State or general unit of local government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

*Review Considerations:* Applications will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows: Project Design and Management—30 points; Applicant Organization & Project Staff Background—30 points; Budget—20 points; Sample Curricula—20 points.

**Note:** NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR Web site at *http://www.ccr.gov*. Applicants can also review a CCR handbook and worksheet at this Web site.

*Number of Awards:* One.

*NIC Opportunity Number:* 11JA01. This number should appear as a reference line in the cover letter, where the opportunity number is requested on Standard Form 424, and on the outside of the envelope in which the application is sent.

*Catalog of Federal Domestic Assistance Number:* 16.601.

*Executive Order 12372:* This project is not subject to the provisions of the executive order.

**Thomas J. Beauclair,**

*Deputy Director, National Institute of Corrections.*

[FR Doc. 2011–2322 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### Annual Determination of Average Cost of Incarceration

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice.

**SUMMARY:** The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2009 was $25,251. The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2009 was $24,758.

**DATES:** *Effective Date:* February 3, 2011.

**ADDRESSES:** Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2009 data, the fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2009 was $25,251. The average annual cost to confine an inmate in a Community Corrections Center for Fiscal Year 2009 was $24,758.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

[FR Doc. 2011–2363 Filed 2–2–11; 8:45 am]

**BILLING CODE 4410–05–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the "BLS GREEN TECHNOLOGIES AND PRACTICES SURVEY." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before April 4, 2011.

**ADDRESSES:** Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (*See* Addresses section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Occupational Employment Statistics (OES) program has been funded to collect and produce objective and reliable information on occupational employment and wages for green jobs at the establishment level. This is to be conducted through a special employer survey. This work is necessary to meet the publication objective outlined in the FY2010 Congressional Appropriation.

The Bureau of Labor Statistics (BLS) presented its approach to measuring green jobs and published its final definition of green jobs in the September 21, 2010, **Federal Register** (75 FR 57506). The measurement approach includes two surveys: one on jobs related to producing green goods and services, and one on jobs related to using environmentally friendly production processes and practices.

The latter approach will be accomplished through a special employer survey. This information collection request is for the Green Technologies and Practices (GTP) Survey. This survey includes collecting the current employment for the establishment; collecting information on the use of environmentally friendly production processes within the establishment; and collecting the number, occupation, and wages paid to employees of the establishment performing environmentally friendly activities.

**II. Current Action**

Office of Management and Budget clearance is being sought for the "BLS Green Technologies and Practices Survey." The goal of BLS and its OES program is to produce economic statistics on employment related to the use of environmentally friendly technologies and practices across the U.S. economy. Using its business establishment register, the OES program intends to survey establishments about these green activities and the associated employment. The survey will identify employers performing green activities, determine whether they have any employees performing tasks associated with these activities, gather information to classify those employees according to the Standard Occupational Classification (SOC) system, and collect wage rate information.

**III. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Type of Review:* New collection.

*Agency:* Bureau of Labor Statistics.

*Title:* BLS Green Technologies and Practices Survey.

*OMB Number:* 1220–NEW.

*Affected Public:* Private sector businesses or other for-profits and not-for-profit institutions; small businesses or organizations; Federal, State, and local governments.

*Total Respondents:* 26,250.

*Frequency:* One time.

*Total Responses:* 27,001.

*Average Time per Response:* 30 minutes.

ESTIMATED TOTAL BURDEN HOURS

| | GPP: Fiscal year 2011 | | | |
|---|---|---|---|---|
| | Sample units | Responses | Avg. response time (minutes) | Total response time (hours) |
| Private sector establishments | 29,470 | 22,103 | 30 | 11,052 |
| Local government establishments | 3,650 | 2,738 | 30 | 1,369 |
| State government establishments | 1,160 | 870 | 30 | 435 |
| Federal government establishments | 720 | 540 | 30 | 270 |
| Response Analysis Survey | 1,000 | 750 | 20 | 250 |
| Total | 36,000 | 27,001 | ..... | 13,376 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 13th day of January 2011.

**Kimberley Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2011–2309 Filed 2–2–11; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL SCIENCE FOUNDATION

### Public Availability of the National Science Foundation FY 2010 Service Contract Inventory

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Public Availability of FY 2010 Service Contract Inventories.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Science Foundation is publishing this notice to advise the public of the availability of the FY 2010 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The National Science Foundation has posted its inventory and a summary of the inventory on the National Science Foundation homepage at the following link: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf11026.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the service contract inventory should be directed to Richard Pihl in the BFA/DACS at 703–292–7395 or *rpihl@nsf.gov.*

Dated: January 28, 2011.

**Suzanne Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2011–2299 Filed 2–2–11; 8:45 am]

**BILLING CODE 7555–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Notice of Federal Long-Term Care Insurance Program Open Season; Correction

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Notice; correction.

**SUMMARY:** The Office of Personnel Management is submitting a correction to the notice published in the **Federal Register** of January 28, 2011 (76 FR 5222). The correction is a change for the ending date of the open season which is June 24, 2011.

**DATES:** This correction is effective as of February 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** For further information, please call 1–800–LTC–FEDS (1–800–582–3337) (TTY: 1–800–843–3557) or visit *http://www.ltcfeds.com.* For purposes of this **Federal Register** notice, the contact at OPM is John Cutler, at *john.cutler@opm.gov* or 202–606–0004.

**Correction**

In the **Federal Register** of January 28, 2011, in FR Doc. 2011–1852, on page 5222, in the third column, correct the **DATES** caption to read:

**DATES:** The Open Season will run from April 4 through June 24, 2011.

U.S. Office of Personnel Management.

**John O'Brien,**

*Director, Healthcare and Insurance.*

[FR Doc. 2011–2370 Filed 2–2–11; 8:45 am]

**BILLING CODE 6325–63–P**

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meeting

**DATES AND TIMES:** Tuesday, February 8, 2011, at 10 a.m.; and Wednesday, February 9, at 8:30 a.m. and 10:30 a.m.

**PLACE:** Washington, DC at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

**STATUS:** Tuesday, February 8 at 10 a.m.—Closed; Wednesday, February 9 at 8:30 a.m.—Open; and at 10:30 a.m.—Closed.

**Matters To Be Considered**

*Tuesday, February 8 at 10 a.m. (Closed)*

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

*Wednesday, February 9 at 8:30 a.m. (Open)*

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Appointment of Committee Members and Committee Reports.
5. Quarterly Report on Financial Performance.
6. Quarterly Report on Service Performance.
7. Tentative Agenda for the March 21–22, 2011, meeting in Washington, DC.

*Wednesday, February 9 at 10:30 a.m. (Closed—if needed)*

1. Continuation of Tuesday's closed session agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**Julie S. Moore,**

*Secretary.*

[FR Doc. 2011–2452 Filed 2–1–11; 8:45 am]

**BILLING CODE 7710–12–P**

## RAILROAD RETIREMENT BOARD

### Public Availability of Railroad Retirement Board FY 2010 Service Contract Inventory

**AGENCY:** Railroad Retirement Board (RRB).

**ACTION:** Notice of Public Availability of FY 2010 Service Contract Inventories.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Railroad Retirement Board is publishing this notice to advise the public of the availability of the FY 2010 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

Railroad Retirement Board has posted its inventory and a summary of the inventory on the Railroad Retirement Board homepage at the following links: *http://www.rrb.gov/general/plan_rpt_inv.asp#inv.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the service contract inventory should be directed to Paul T. Ahern, Supervisory Contract Specialist, in the Division of Acquisition Management, Railroad Retirement Board, at (312) 751–7130 or *Paul.Ahern@rrb.gov.*

Dated: January 26, 2011.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 2011–2165 Filed 2–2–11; 8:45 am]

**BILLING CODE 7905–01–M**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Subcommittee on Forensic Science; Committee on Science; National Science and Technology Council

**ACTION:** Notice of meeting. Public input is requested concerning Automated Fingerprint Identification System (AFIS) interoperability and the appropriate Federal Executive Branch responses to the AFIS interoperability issues identified in the National Academy of Sciences 2009 report: "Strengthening Forensic Science in the United States: A Path Forward" (*http://www.nap.edu/catalog.php?record_id=12589#toc*).

**SUMMARY:** The Subcommittee on Forensic Science (SoFS) of the National Science and Technology Council's (NSTC's) Committee on Science will host a public forum in collaboration with the annual scientific meeting of the American Academy of Forensic Sciences (AAFS). The role of the SoFS is to coordinate Federal activities and advise the Executive Office of the President on national efforts to improve forensic science and its application in America's justice system. This special session will serve to provide the public with the opportunity to ask questions and provide comments on issues related to Automated Fingerprint Identification System (AFIS) latent print interoperability.

*Dates and Addresses:* The session will be held in conjunction with the 63rd Annual Scientific Meeting of the American Academy of Forensic Sciences, at the Hyatt Regency Hotel, Columbus Hall KL, located at 151 East Wacker Drive, Chicago, Illinois 60601. The session will be held on Friday, February 25, 2011, from 7 p.m. to 8:30 p.m. Information regarding the 63rd AAFS Annual Meeting is available at the AAFS Web site: *http://www.aafs.org.*

**Note:** Persons solely attending the SoFS public session do not need to register for the AAFS Annual Meeting to attend. There will be no admission charge for persons solely attending the public meeting. Seating is limited and will be on a first come, first served basis. For those who cannot attend but wish to provide written comments or questions, please do so by sending an e-mail to the Subcommittee's Executive Secretary, Robin Jones, at: *Robin.W.Jones@usdoj.gov,* no later than Wednesday, February 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Additional information and links to the Subcommittee on Forensic Science can be obtained through the Office of Science and Technology Policy's NSTC Web site at *http://www.ostp.gov/nstc* or by calling 202–456–6012.

**Kenneth E. Melson,**

*Co-Chair, Subcommittee on Forensic Science.*

[FR Doc. 2011–2440 Filed 2–2–11; 8:45 am]

**BILLING CODE 4410–FY–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–29573]**

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 28, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company

Act of 1940 for the month of January 2011. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2011, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

**UBS Index Trust**

[File No. 811–8229]

**SUMMARY:** Applicant seeks an order declaring that it has ceased to be an investment company. On December 7, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $31,000 incurred in connection with the liquidation were paid by UBS Global Asset Management (Americas) Inc., an affiliate of applicant's investment adviser.

**FILING DATE:** The application was filed on December 22, 2010.

**APPLICANT'S ADDRESS:** 1285 Avenue of the Americas, 12th Floor, New York, NY 10019–6028.

**BlackRock Insured Municipal Term Trust Inc.**

[File No. 811–6512]

**SUMMARY:** Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 30, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Prior to the liquidation date, applicant had redeemed all of its Series M7 and Series M28 Preferred Shares at their liquidation preference plus any accrued but unpaid dividends. Expenses of $24,740 incurred in connection with the liquidation were paid by applicant. Applicant has transferred approximately $948,176 in cash to a liquidating trust to pay for contingent liabilities recognized after the liquidation date.

**FILING DATE:** The application was filed on December 30, 2010.

**APPLICANT'S ADDRESS:** 100 Bellevue Parkway, Wilmington, DC 19809.

**Credit Suisse Large Cap Growth Fund**

[File No. 811–5041]

**Credit Suisse Mid-Cap Core Fund, Inc.**

[File No. 811–5396]

**SUMMARY:** Each applicant seeks an order declaring that it has ceased to be an investment company. On October 8, 2010, each applicant transferred its assets to Credit Suisse Large Cap Blend Fund, Inc., based on net asset value. Expenses of $44,633 and $49,347, respectively, incurred in connection with the reorganizations were paid by Credit Suisse Asset Management, LLC, applicants' investment adviser.

**FILING DATE:** The applications were filed on December 15, 2010.

**APPLICANTS' ADDRESS:** Eleven Madison Ave., New York, NY 10010.

**Fortress Investment Trust II**

[File No. 811–21140]

**SUMMARY:** Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

**FILING DATE:** The application was filed on January 3, 2011.

**APPLICANT'S ADDRESS:** 1345 Avenue of the Americas, 46th Floor, New York, NY 10105.

**DCW Total Return Fund**

[File No. 811–21840]

**SUMMARY:** Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 24, 2010, applicant transferred its assets to DCA Total Return Fund, based on net asset value. Expenses of approximately $279,721 incurred in connection with the reorganization were paid by applicant, the acquiring fund, and Dividend Capital Investments LLC, applicant's investment adviser.

**FILING DATE:** The application was filed on December 28, 2010.

**APPLICANT'S ADDRESS:** 518 17th St., Suite 1200, Denver, CO 80202.

**First Trust/Four Corners Senior Floating Rate Income Fund**

[File No. 811–21344]

**SUMMARY:** Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 30, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Prior to the liquidation date, applicant had redeemed all of its outstanding money market cumulative preferred shares. Expenses of approximately $42,799 incurred in connection with the liquidation were paid by applicant.

**FILING DATE:** The application was filed on January 4, 2011.

**APPLICANT'S ADDRESS:** 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

**Mirae Asset Global Investments (USA), LLC**

[File No. 811–22402]

**SUMMARY:** Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

**FILING DATE:** The application was filed on January 10, 2011.

**APPLICANT'S ADDRESS:** One Bryant Park, 39th Floor, New York, NY 10036.

**Eagle Cash Trust**

[File No. 811–4337]

**SUMMARY:** Applicant seeks an order declaring that it has ceased to be an investment company. On August 27, 2010, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $50,378 incurred in connection with the liquidation were paid by Eagle Asset Management, Inc., applicant's investment adviser.

**FILING DATE:** The application was filed on January 10, 2011.

**APPLICANT'S ADDRESS:** 880 Carillon Pkwy., St. Petersburg, FL 33716.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2354 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63796; File No. SR–NASDAQ–2011–010]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Link Market Data Fees and Transaction Execution Fees

January 28, 2011.

### I. Introduction

On January 10, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to discount certain market data fees and increase certain liquidity provider rebates for members that both (1) execute specified levels of transaction volume on NASDAQ as a liquidity provider, and (2) purchase specified levels of market data from NASDAQ. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] Notice of filing of the proposed rule change was published in the **Federal Register** on January 27, 2011.[4]

Under Section 19(b)(C)(3) of the Act, the Commission is (1) hereby temporarily suspending File No. SR–NASDAQ–2011–010, and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NASDAQ–2011–010.

### II. Summary of the Proposed Rule Change

NASDAQ proposes to provide a discount on non-professional market data fees for NASDAQ Depth Data [5] ("NASDAQ Depth Data Product Fees") charged to a member that provides displayed liquidity through the NASDAQ Market Center and incurs NASDAQ Depth Data Product Fees at certain specified levels.[6] Specifically, a member would qualify as a:

- "Tier 1 Firm" for purposes of pricing during a particular month if it (i) has an average daily volume of 12 million shares or more of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of $150,000 or more.
- "Tier 2 Firm" for purposes of pricing during a particular month if it (i) has an average daily volume of 35 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of $300,000 or more.
- "Tier 3 Firm" for purposes of pricing during a particular month if it (i) has an average daily volume of 65 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of $500,000 or more.

Tier 1 Firms would receive a 15% discount on NASDAQ Depth Data Product Fees charged to them, Tier 2 Firms would receive a 35% discount on NASDAQ Depth Data Product Fees charged to them, and Tier 3 Firms would receive a 50% discount on NASDAQ Depth Data Product Fees charged to them.[7] In addition, Tier 1 Firms would receive an increased liquidity provider rebate for transactions executed on NASDAQ. Specifically, Tier 1 Firms would receive a rebate of $0.0028 per share for displayed liquidity and $0.0015 per share for undisplayed liquidity, compared to the current liquidity provider credit of $0.0020 per share of displayed liquidity and $0.0010 per share of non-displayed liquidity applicable to these firms. There is no enhancement to the liquidity provider credits at this time for Tier 2 and Tier 3 firms.

### III. Summary of Comment Letters

To date, the Commission has received one comment letter on NASDAQ's proposed rule change.[8] In its comment letter, Direct Edge argues, among other things, that the proposed rule change should be suspended because, in its view, offering discounts on NASDAQ's market data fees only to customers who meet specified minimum order flow thresholds and provide such data to non-professional users does not meet the "fair and reasonable" standard for market data fees under the Exchange Act.

### IV. Suspension of SR–NASDAQ–2011–010

Pursuant to Section 19(b)(3)(C) of the Act,[9] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[10] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

Under the proposal, the level of fees that a market participant would be charged for obtaining NASDAQ market data would be tied to the extent of that market participant's trading in the NASDAQ market. In addition, the level of transaction rebates that a market participant receives for trading on NASDAQ would be tied to the level of NASDAQ market data that it purchases. The Commission is concerned that such a tying arrangement may not be consistent with the statutory requirements applicable to a national securities exchange under the Act, as described below. For instance, the Commission is concerned that the proposal may fail to satisfy the standards under the Exchange Act and the rules thereunder that require market data fees to be equitable, fair, and not unreasonably discriminatory.[11]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.

### V. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2011–010

The Commission is instituting proceedings pursuant to Sections

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 63745 (January 20, 2011) 76 FR 4970 ("Notice"). The Commission has received one comment letter on the proposed rule change to date. *See* Letter dated January 13, 2011 from William O'Brien, Chief Executive Officer, Direct Edge to Florence E. Harmon, Deputy Secretary, Commission (the "Direct Edge Letter"). The commenter suggested that the proposed rule change should be suspended and that the Commission should institute proceedings to determine whether to approve or disapprove the proposal.

[5] NASDAQ Depth Data includes National Quotation Data Service (individual market maker quotation data), TotalView (depth-of-book data for NASDAQ-listed securities), and OpenView (depth-of-book data for non-NASDAQ-listed securities) data products.

[6] For a more detailed description of the proposed rule change, *see* Notice, *supra* note 4.

[7] A NASDAQ member incurs non-professional fees when it offers NASDAQ Depth Data to natural persons that are not acting in a capacity that subjects them to financial industry regulation (*e.g.,* retail customers).

[8] *See* Direct Edge Letter *supra,* note 4.

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 15 U.S.C. 78s(b)(1).

[11] *See infra,* notes 17–24.

19(b)(3)(C)[12] and 19(b)(2) of the Act[13] to determine whether NASDAQ's proposed rule change should be approved or disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[14] the Commission is providing notice of the grounds for disapproval under consideration. Under the proposal, the level of fees that a market participant would be charged for obtaining NASDAQ market data would be tied to the extent of that market participant's trading in the NASDAQ market. The Exchange Act and the rules thereunder require that market data fees must be equitable, fair, reasonable, and not unreasonably discriminatory.[15] In this regard, the Commission has stated previously that the Exchange Act precludes exchanges from adopting terms for market data distribution that unfairly discriminate by favoring participants in an exchange's market or penalizing participants in other markets.[16] The Commission is concerned that NASDAQ's proposal may be inconsistent with this standard. The Commission believes that the NASDAQ proposal raises significant legal and policy issues. Specifically, the Commission has serious concerns as to whether NASDAQ's proposal to tie market data fees and execution fees is consistent with the Exchange Act. The Commission has similar concerns with respect to NASDAQ's proposal to tie the level of transaction rebates paid to market participants to the amount of market data they purchase.

The Commission believes it is appropriate in the public interest to institute disapproval proceedings at this time in view of the significant legal and policy issues raised by the proposal. Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder that are applicable to the proposed rule change include:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities";[17]
- Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to, among other things, "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" and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers";[18]
- Section 6(b)(8) of the Act,[19] which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate" in furtherance of the Act;[20]
- Section 11A(a) of the Act, in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure "economically efficient execution of securities transactions," "fair competition among brokers and dealers and among exchange markets," "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities," and "the practicability of brokers executing investors' orders in the best market";[21]
- Rule 603(a)(1) of Regulation NMS, which requires any exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock, as that term is defined in Rule 600(b) of Regulation NMS,[22] to a securities information processor to "do so on terms that are fair and reasonable";[23] and
- Rule 603(a)(2) of Regulation NMS, which requires a national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor to "do so on terms that are not unreasonably discriminatory".[24]

## VI. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by March 21, 2011. Rebuttal comments should be submitted by April 4, 2011. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[25]

The Commission asks that commenters address the merit of NASDAQ's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–010. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[12] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[15] *See infra,* notes 17–24.

[16] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 at 74791 (December 9, 2008) (SR–NYSEArca–2006–21) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change FRelating to NYSE Arca Data) ("NYSE Arca Order"), vacated and remanded by *NetCoalition* v. *SEC* No. 09–1042 (DC Cir. 2010).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78f(b)(8).

[21] 15 U.S.C. 78k–1(a)(1)(C)(i)–(iv).

[22] *See* 17 CFR 242.600(b)(46) and (47), defining "NMS stock" as any NMS security other than an option and defining "NMS security" as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

[23] 17 CFR 242.603(a)(1).

[24] 17 CFR 242.603(a)(2).

[25] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.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–NASDAQ–2011–010 and should be submitted on or before March 21, 2011. Rebuttal comments should be submitted by April 4, 2011.

## VII. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(3)(C) of the Act,[26] that File No. SR–NASDAQ–2011–010, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2376 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[26] 15 U.S.C. 78s(b)(3)(C).

[27] 17 CFR 200.30–3(a)(57) and (58).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63792; File No. SR–NYSE–2010–77]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposal of NYSE Euronext To Eliminate the Requirement of an 80% Supermajority Vote To Amend or Repeal Section 3.1 of its Bylaws

January 28, 2011.

On November 30, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Bylaws of its parent corporation, NYSE Euronext ("Corporation"). On December 3, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 17, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

On behalf of the Corporation, NYSE proposed to amend the Corporation's Bylaws to eliminate the requirement that the affirmative vote of the holders of not less than 80% of the votes entitled to be cast by the holders of the outstanding capital stock of the Corporation entitled to vote generally in the election of directors is necessary for the stockholders to amend or repeal Article III, Section 3.1 of the Bylaws relating to the general powers of the Board of Directors of the Corporation ("Board"). Section 3.1 provides that the number of directors on the Board shall be fixed and changed from time to time exclusively by the Board pursuant to a resolution adopted by two-thirds of the directors then in office. The Exchange stated that the elimination of this 80% "supermajority" voting provision as it relates to Article III, Section 3.1 would have the effect that only a majority of the same number of votes entitled to be cast will be required to amend or repeal this section of the Corporation's Bylaws. The Exchange noted that it believes that the proposed rule change will permit the Corporation to respond to a stockholder proposal requesting that the Corporation implement a simple majority voting standard to amend its Certificate of Incorporation and Bylaws.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[5] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members with the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of the exchange be designed, among other things, 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 Commission believes that the proposed rule change to amend the Corporation's Bylaws to eliminate the 80% supermajority requirement to amend or repeal Article III, Section 3.1 of the Bylaws in favor of a simple majority vote standard is consistent with the Act. The Commission believes that the proposed rule change is designed to allow changes to Article III, Section 3.1 of the Corporation's Bylaws to be made in a manner that reflects the desires of the Corporation's shareholders.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2010–77), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2353 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63532 (December 13, 2010), 75 FR 79060.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78(b)(1).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63786; File Nos. SR–NASDAQ–2011–013, SR–PHLX–2011–08, SR–BX–2011–04]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to a Stockholders' Agreement Between the NASDAQ OMX Group, Inc. and Investor AB

January 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 19, 2011, The NASDAQ Stock Market LLC ("NASDAQ Exchange") and NASDAQ OMX PHLX LLC ("PHLX"), and, on January 20, 2011, NASDAQ OMX BX, Inc. ("BX") (collectively, the "NASDAQ OMX Exchange Subsidiaries") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I and II below, which Items have been substantially prepared by the NASDAQ OMX Exchange Subsidiaries. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

### I. Self-Regulatory Organizations' Statement of the Terms of the Substance of the Proposed Rule Changes

The NASDAQ OMX Exchange Subsidiaries are filing the proposed rule changes regarding a stockholders' agreement between the NASDAQ OMX Exchange Subsidiaries' parent corporation, NASDAQ OMX, and Investor AB, a corporation organized under the laws of Sweden ("Investor Stockholders' Agreement"). The NASDAQ OMX Exchange Subsidiaries propose to implement these changes upon filing of these proposed rule changes. There is no proposed rule text.

### II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, each of the NASDAQ OMX Exchange Subsidiaries included statements concerning the purpose of and basis for its proposed rule change and discussed any comments it received on its proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Each of the NASDAQ OMX Exchange Subsidiaries has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

1. Purpose

On December 16, 2010, NASDAQ OMX entered into an agreement to repurchase approximately 22.8 million shares of NASDAQ OMX common stock, $0.01 par value per share, for $21.82 per share (approximately $497 million in aggregate) from Borse Dubai Limited ("Borse Dubai") (the "Stock Repurchase"). Also on December 16, 2010, Nomura International plc ("Nomura") agreed to purchase 8 million shares of NASDAQ OMX common stock from Borse Dubai ("Nomura Purchase"). The Stock Repurchase and Nomura Purchase closed on December 21, 2010.

On December 16, 2010, NASDAQ OMX and Investor AB also entered into the Investor Stockholders' Agreement, relating to 8 million shares of NASDAQ OMX common stock that Investor AB may purchase pursuant to a forward share purchase agreement with Nomura. The Investor Stockholders' Agreement will generally become effective after all applicable regulatory reviews or consents have been completed or obtained, and the purchase by Investor AB of 8 million shares of NASDAQ OMX common stock from Nomura has been completed (the "Transaction"). After the completion of the Transaction, it is anticipated that Investor AB would be the beneficial owner of approximately 9.7% of the outstanding capital stock of NASDAQ OMX.

The NASDAQ OMX shares to be acquired by Investor AB from Nomura are, and will be, subject to Article Fourth of NASDAQ OMX's Restated Certificate of Incorporation,[3] which provides that no person who is the beneficial owner of voting securities of NASDAQ OMX in excess of 5% of the then-outstanding shares of stock generally entitled to vote ("Excess Securities") may vote such Excess Securities.

Prior to the closing of the Stock Repurchase and the Nomura Purchase, under the existing Stockholders' Agreement between NASDAQ OMX and Borse Dubai ("Borse Dubai Stockholders' Agreement") Borse Dubai had the right to recommend two persons reasonably acceptable to the NASDAQ OMX Nominating Committee (or any successor committee serving such function) ("Nominating Committee") to serve as directors of NASDAQ OMX (the "Borse Dubai Designees"). In addition, under the Borse Dubai Stockholders' Agreement, NASDAQ OMX had agreed to use reasonable best efforts to cause appointment of one of the Borse Dubai Designees to the Audit, Executive, Finance and Management Compensation committees of the Board, and to cause the appointment of another person designated by Borse Dubai to serve on the Nominating Committee, but in each case only if such designees met the requirements for service on such committee. By operation of the Borse Dubai Stockholders' Agreement, the sale of approximately 30.8 million shares of NASDAQ OMX common stock by Borse Dubai resulted in a reduction in the Borse Dubai Designees from two to one and in the forfeit of the right to designate a member to the specified Board committees.[4] As a result, as of December 21, 2010, Borse Dubai is entitled to nominate one Borse Dubai Designee to serve as a director of NASDAQ OMX and has no rights with regard to Board committee membership.

Under the Investor Stockholders' Agreement, among other things, Investor AB will have the right to recommend one person reasonably acceptable to the Nominating Committee to serve as a director of NASDAQ OMX (the "Investor Board Designee"). NASDAQ OMX will: (i) Include the Investor Board Designee on each slate of nominees proposed by management of NASDAQ OMX; (ii) recommend the election of the Investor Board Designee to the stockholders of NASDAQ OMX; and (iii) otherwise use reasonable best efforts to cause the Investor Board Designee to be elected to the Board. NASDAQ OMX also has agreed to use reasonable best efforts to: (i) Cause the appointment of the Investor Board Designee to a committee of the Board reasonably agreed by Investor AB and NASDAQ OMX, and (ii) cause the appointment of one person designated by Investor AB who shall not be an Investor Board Designee and who shall be reasonably acceptable to the Nominating Committee to a committee of the Board reasonably agreed to by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As amended most recently on May 11, 2009. *See* Securities Exchange Act Release No. 59858 (May 4, 2009), 74 FR 22191 (May 12, 2009)(SR–NASDAQ–2009–039).

[4] The provisions relating to the Borse Dubai Designees remained in effect as long as Borse Dubai maintained at least 50% of 42,901,148 shares of NASDAQ OMX common stock that had been acquired by Borse Dubai Limited. As long as Borse Dubai maintains at least 25% of these shares, it will be entitled to propose one director for nomination, but will have no rights with regard to committees.

Investor AB and NASDAQ OMX ("Additional Committee Designee"), in each of the foregoing subject to applicable law, regulation, stock exchange listing standard or committee composition standards. The provisions relating to the Investor Board Designee and committee membership remain in effect as long as Investor AB beneficially owns at least 5% of the outstanding capital stock of NASDAQ OMX.

The Investor Stockholders' Agreement relates solely to the Board of NASDAQ OMX, and not to the boards of any of its subsidiaries, including the board of directors of the NASDAQ OMX Exchange Subsidiaries. Nevertheless, the provisions of the Investor Stockholders' Agreement described above could be considered a proposed rule change of a subsidiary that is a self-regulatory organization ("SRO"), if the provisions were viewed as affecting the influence that a significant stockholder of the parent corporation might be seen as exercising over the business and affairs of the SRO in its capacity as a wholly owned subsidiary of the parent corporation. Accordingly, senior management of the NASDAQ OMX Exchange Subsidiaries, through delegated authority of their governing boards, have determined that the proposed changes should be filed with the Commission, and the governing boards of BSECC and SCCP have each reviewed the proposed changes and determined that they should be filed with the Commission.[5]

In general, directors of NASDAQ OMX, including the Investor Board Designee, must be nominated by a Nominating Committee,[6] the composition of which is subject to the requirements of the NASDAQ OMX By-Laws and NASDAQ Exchange Rule 5605(e),[7] and must then be elected by the stockholders of NASDAQ OMX. The NASDAQ OMX Board is currently composed of 15 members and is expected to increase to 16 members upon the closing of the Transaction. Thus, the Investor Board Designee would represent approximately 6% of the NASDAQ OMX Board.

Board committees are subject to compositional requirements established by the NASDAQ OMX By-Laws; moreover, the Audit, Management Compensation, and Nominating Committees are subject to independence requirements established by NASDAQ Exchange Rule 5605 and, in the case of the Audit Committee, by SEC Section 10A and Rule 10A–3 of the Act.[8] Thus, the affiliations of the Investor Board Designee and Additional Committee Designee and the judgment of the NASDAQ OMX Board of Directors with regard to his or her independence will be taken into account in considering eligibility for service on these committees.

2. Statutory Basis

The NASDAQ OMX Exchange Subsidiaries believe that their respective proposed rule changes are consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[10] in particular, in that the proposals enable the NASDAQ OMX Exchange Subsidiaries to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organizations' Statement on Burden on Competition*

The NASDAQ OMX Exchange Subsidiaries do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Because the foregoing proposed rule changes do not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the dates on which they were filed, or such shorter time as the Commission may designate, they have become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.[13] The NASDAQ OMX Exchange Subsidiaries have requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act[14] to ensure that the filing is effective and therefore does not delay the closing of the Transaction. The parties to the Transaction expect all regulatory actions necessary for the closing of the Transaction to be completed as early as January 2011. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.[15]

[5] The NASDAQ OMX Exchange Subsidiaries, BSECC and SCCP are each submitting this filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

[6] An exception to the requirement of nomination by the Nominating Committee exists for nominations by a stockholder who is conducting a proxy contest and who complies with the strict requirements of the NASDAQ OMX By-Laws governing direct stockholder nomination. The Investor Board Designee would not be nominated by Investor AB under these provisions.

[7] The NASDAQ OMX By-Laws provide that the Nominating Committee shall be appointed annually by the Board of Directors and shall consist of four or five directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ OMX Exchange Subsidiaries. The number of Non-Industry Directors (*i.e,* directors without material ties to the securities industry) on the Nominating Committee shall equal or exceed the number of Industry Directors and at least two members of the committee shall be Public Directors (*i.e.,* directors who have no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA). Rule 5605(e), which governs NASDAQ OMX as a company whose securities are listed on the Exchange, requires Nominating Committee members to satisfy the definition of "independence" in NASDAQ Exchange Rule 5605 and IM–5605 and to otherwise be deemed independent by the Board of Directors.

[8] 17 CFR 240.10A–3.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(1), (5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a SRO submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the NASDAQ OMX Exchange Subsidiaries have satisfied the five-day pre-filing notice requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission

Continued

At any time within 60 days of the filing of the respective proposed rule change by the applicable NASDAQ OMX Exchange Subsidiary, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* please include File Nos. SR–NASDAQ–2011–013, SR–PHLX–2011–08, and SR–BX–2011–04 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 Nos. SR–NASDAQ–2011–013, SR–PHLX–2011–08, and SR–BX–2011–04. These file numbers should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal offices of the NASDAQ OMX Exchange Subsidiaries. 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 Nos. SR–NASDAQ–2011–013, SR–PHLX–2011–08, and SR–BX–2011–04 and should be submitted on or before February 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2293 Filed 2–2–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Andresmin Gold Corp., Order of Suspension of Trading

February 1, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Andresmin Gold Corp. because it has not filed any periodic reports since the period ended December 31, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on February 1, 2011, through 11:59 p.m. EST on February 14, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2502 Filed 2–1–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Eternal Technologies Group, Inc., Order of Suspension of Trading

February 1, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eternal Technologies Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on February 1, 2011, through 11:59 p.m. EST on February 14, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–2495 Filed 2–1–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

### Federal Register Meeting Notice: Advisory Committee on Veterans Business Affairs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Advisory Committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

**DATES:** Thursday, February 17, 2011 from 9 a.m. to 5 p.m. in the Eisenhower Conference Room, side b, located on the 2nd floor.

**ADDRESSES:** U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to

has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

the Administrator of the U.S. Small Business Administration.

The purpose of this meeting is to focus on "Business Counseling and Training" as well as welcoming new members, strategic planning, updates on past and current events and the ACVBA's objectives for 2011.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by February 14, 2011 by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 619–1697, Fax number: 202–481–6085, e-mail address: *cheryl.simms@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619–1697; e-mail address: *cheryl.simms@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: January 21, 2011.

**Dan S. Jones,**

*SBA Committee Management Officer.*

[FR Doc. 2011–2174 Filed 2–2–11; 8:45 am]

**BILLING CODE 8025–01–M**

## DEPARTMENT OF STATE

**[Public Notice 7239]**

### U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Family Law

The Department of State, Office of Legal Adviser, Office of Private International Law would like to give notice of a public meeting to discuss preparations for the upcoming Special Commission of the Hague Conference on Private International Law on the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention. The Special Commission will be held in two sessions: June 2011 and January 2012. The public meeting will focus on the desirability and feasibility of a protocol to the 1980 Hague Child Abduction Convention. In that regard, the Permanent Bureau of the Hague Conference has circulated to member States a questionnaire (which may be found at: *http://www.hcch.net/upload/wop/sc2011pd02e.DOC*). The questionnaire asks whether member States believe that the a protocol to the Abduction Convention should be negotiated and, if so, whether any such protocol should address: (1) Mediation, conciliation, and other similar means to promote the amicable resolution of cases under the Abduction Convention; (2) direct judicial communications; (3) expeditious procedures; (4) the safe return of the child; (5) allegations of domestic violence; (6) the views of the child; (7) enforcement of return orders; (8) access and contact; (9) definitions; (10) international relocation of a child; (11) reviewing the operation of the Abduction Convention; or (12) other matters. Responses from member States are due March 15, 2011.

*Time and Place:* The public meeting will take place on Friday, March 4, 2011, from 9:30 a.m. to 1:30 p.m. EST in Room 1107 in the Department of State's Harry S Truman Building, 2201 C Street, NW., Washington, DC 20520. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

*Public Participation:* This meeting is open to the public, subject to the capacity of the meeting room. Access to the meeting building is controlled. Persons wishing to attend in person or telephonically should contact Trisha Smeltzer (*SmeltzerTK@state.gov*) or Niesha Toms (*TomsNN@state.gov*) of the Office of Private International Law. If you would like to participate in person or telephonically, please provide your name, affiliation, e-mail address, and mailing address. If you would like to participate in person, please also provide your date of birth, citizenship, and driver's license or passport number for entry in the Harry S Truman building. Members of the public who are not precleared might encounter delays with security procedures. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. *Please see* the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information. A member of the public needing reasonable accommodation should advise either of the aforementioned contacts not later than February 23, 2011. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to comment on any of the 12 matters identified above, please identify those matters so that an agenda, with appropriate allocations of time, may be developed.

Dated: January 26, 2011.

**Michael S. Coffee,**

*Attorney-Adviser, Office of Private International Law, Washington, DC.*

[FR Doc. 2011–2396 Filed 2–2–11; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF STATE

**[Public Notice 7007]**

### Notice of Closed Meeting of the Cultural Property Advisory Committee

There will be a closed meeting of the Cultural Property Advisory Committee on Wednesday, February 23, 2011, from approximately 9 a.m. to 5 p.m.; Thursday, February 24, 2011, from approximately 9 a.m. to 5 p.m.; and Friday, February 25, 2010, from approximately 9 a.m. to 12 noon at the Department of State, Annex 5, 2200 C Street, NW., Washington, DC.

During its meeting, the Committee will review the cultural property request from the Government of the Hellenic Republic seeking import restrictions on archaeological and ethnological material. An open session to receive oral public comment on this request was held on October 12, 2010; therefore, no open session is scheduled for this meeting. At that time, outside interested parties submitted written comments for the Committee's consideration. A Public Summary of the request from Greece is available at *http://exchanges.state.gov/culprop.*

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act and related information may be found at *http://exchanges.state.gov/culprop.*

The meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that "The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of section 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent

it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title."

Dated: January 28, 2011.

**Ann Stock,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–2397 Filed 2–2–11; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 7316]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Summer Institutes for European Student Leaders

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/E/EUR–11–07.

Catalog of Federal Domestic Assistance Number: 19.009.

### Key Dates

*Application Deadline:* March 15, 2011.

*Executive Summary:* The Europe/Eurasia Branch of the Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, invites proposal submissions for the design and implementation of two Summer Institutes for European Student Leaders. The Institutes will take place over the course of five weeks, beginning mid-July 2011.

The Institutes should take place at U.S. academic institutions and provide groups of highly motivated undergraduate students or recent high school graduates from Denmark, France, Germany, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom with in-depth seminars on the topics detailed in the following section. Each Institute should conclude with a two- or three-day session in Washington, DC.

ECA welcomes applications from accredited post-secondary education institutions in the United States. The awarding of one or more Cooperative Agreements for this program is contingent upon the availability of FY 2011 funds.

### I. Funding Opportunity Description

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

*Purpose*

The Summer Institutes for European Student Leaders are intensive academic programs whose purpose is to provide groups of undergraduate leaders an introduction to a specific field of study, while also heightening their awareness of the history and evolution of U.S. society, culture, values, and institutions, broadly defined. In this context, the Institutes should incorporate a focus on contemporary American life, as it is shaped by historical and/or current political, social, and economic issues and debates. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, and diversity and tolerance should be addressed.

In addition to promoting a better understanding of a specific field of study and the United States, an important objective of the Institutes is to develop the participants' leadership skills. In this context, the academic program should include group discussions, trainings, and exercises that focus on topics such as leadership, teambuilding, collective problem-solving skills, effective communication, and management skills for diverse organizational settings. Institutes should include a community service component in which the students experience firsthand how not-for-profit organizations and volunteerism play a key role in American civil society.

Local site visits should provide opportunities to observe varied aspects of American life and to discuss lessons learned in the academic program. The program should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

*Overview*

Summer Institutes will provide an in depth study of one of the themes outlined below. Participants should gain both theoretical knowledge and practical skills that will allow them to excel in their disciplines. In addition to thematic teaching, all institutes should explore American history, government, society, and culture through the lens of its particular theme. All Institutes should include opportunities for leadership development, specifically as it relates to each field. Institutes should also expose participants to community organizations that provide advocacy or other services relevant to the particular theme.

*Institute Themes*

(a) The Summer Institute on Environmental Stewardship should use experiential learning techniques to expose participants to current themes in studies of the environment, including natural resource management, sustainable development/sustainable agricultural practices, food security, ecotourism, energy generation (new and traditional forms), and water management and treatment. The issues should be explored from numerous angles: local grassroots activism and civic initiatives, market-oriented approaches, and Federal government policies and regulation. The Institute might also examine the relationship between environmental security and national security. Finally, the Institute should explore environmental issues in the context of a globalized society, and draw comparisons between the United States and the participants' home countries.

The Institute should also provide opportunities for participants to engage with policy makers, individuals in technical positions, community representatives, indigenous leaders, and other key actors committed to the protection and management of the environment.

The Summer Institute on Environmental Stewardship will host approximately 18 undergraduate students. Student participants are expected to be conversant in English; however, the host campus should be prepared to offer English language support, such as individual tutoring or small-group classes, if necessary.

(b) The Summer Institute on Innovation and Economics should provide participants with an overview of entrepreneurship, including ways of employing entrepreneurial skills to

address social issues. The Institute should review the development, history, challenges, and successes of social entrepreneurs and community leaders, in the United States and globally. Topics may include, but are not limited to, microfinance; organizational development and management; grant writing; innovation; emerging markets and risk analysis; strategic business planning; corporate social responsibility; problem-solving; and, women and minorities in entrepreneurship.

The Summer Institute on Innovation and Economics will host approximately 16 undergraduate students. Student participants are expected to be conversant in English; however, the host campus should be prepared to offer English language support, such as individual tutoring or small-group classes, if necessary.

The Summer Institutes for European Student Leaders must comply with J–1 Visa regulations. It is anticipated that cooperative agreements for the administration of the Summer Institutes will begin on or about May 2, 2011, subject to the availability of funds. Please refer to the Solicitation Package for further information.

*Program Administration*

The Bureau is seeking detailed proposals from accredited post-secondary U.S. institutions meeting the eligibility requirements outlined under Section III below. Post-secondary U.S. institutions may propose to administer one or both Institutes and should designate an administrative director to oversee the program, coordinate logistical, budgetary and administrative arrangements, and serve as ECA's primary point of contact.

Each host institution also should designate an academic director who will be present throughout the program to ensure the continuity, coherence, and integration of all aspects of the academic program, including the related educational study tour. It is important that the applicant organization also retain qualified U.S. undergraduate students who will act as peer mentors at each host institution. Peer mentors should exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to accompany the students throughout the program.

*Participants*

Participants will be identified and nominated by Fulbright Commissions with final selection made by ECA. Participants in the Summer Institutes for European Student Leaders will be highly motivated undergraduate students or recent high school graduates who demonstrate leadership through academic work, community involvement, and extracurricular activities. Their major fields of study will be varied, and will include the sciences, social sciences, humanities, education, and business. All participants will have demonstrated interest in the Institute's theme.

Every effort will be made to select a balanced mix of male and female participants, and to recruit participants who are from non-elite or underprivileged backgrounds, from both rural and urban areas, and have had little or no prior experience in the United States or elsewhere outside of their home country.

*Program Dates*

The Institutes should be five weeks in length, beginning mid-July 2011.

*Program Guidelines*

While the conception and structure of the Institute agenda is the responsibility of the organizers, it is essential that proposals provide a detailed and comprehensive narrative describing the objectives of the Institute; the title, scope, and content of each session; planned site visits; and how each session relates to the overall Institute theme. Proposals must include a syllabus that indicates the subject matter for each lecture, panel discussion, group presentation, or other activity. The syllabus also should confirm or provisionally identify proposed speakers, trainers, and session leaders, and clearly show how assigned readings will advance the goals of each session. Overall, proposals will be reviewed on the basis of their responsiveness to RFGP criteria, coherence, clarity, and attention to detail. The accompanying Project Objectives, Goals, and Implementation (POGI) document provides program-specific guidelines that all proposals must address fully.

**Please note:** In a cooperative agreement, the Office of Academic Exchange Programs is substantially involved in program activities above and beyond routine monitoring. The Office of Academic Exchange Programs will be responsible for the following program activities:

- Making participants' application materials available for review by the host institutions.
- Facilitating communication between host institutions and the Fulbright Commissions.
- Sharing participants' international travel itineraries with the host institutions. The Fulbright Commissions will arrange the international travel for each participant. All travel itineraries must comply with the provisions of the Fly America Act.
- Enrolling all participants in the Accident and Sickness and Sickness Program for Exchanges (ASPE). This health benefits program will be of no cost to the host institutions, although co-payments will be the responsibility of the host institutions and should be included in the proposal budget.
- Issuing DS–2019s for the participants to enter the United States on J–visas.
- Assisting in organizing workshops in Washington, DC, at the conclusion of the Institutes. All costs for the final workshops (travel to Washington, lodging, meals) will be the responsibility of the host institutions and should be included in the proposal budget.
- Providing host institutions with travel itineraries for all participants.
- Assisting in resolving participant emergencies.

## II. Award Information

*Type of Award:* Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds:* FY 2011.

*Approximate Total Funding:* $306,000.

The Institute on Environmental Stewardship: $162,000.

The Institute on Innovation and Economics: $144,000.

*Approximate Number of Awards:* 1–2.

*Anticipated Award Date:* Pending availability of funds, May 2, 2011.

*Anticipated Project Completion Date:* January 1, 2012.

*Additional Information*

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant or cooperative agreement for two additional fiscal years, before openly competing it again.

## III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must

maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements*

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making awards in amounts up to $144,000, $162,000, or $306,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

**IV. Application and Submission Information**

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:* Please contact Program Officer Karene Grad Steiner, Office of Academic Exchange Programs, ECA/A/E/EUR, SA–5, Floor 4, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, (202) 632–3237 or *GradKE@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EUR–11–07 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please *see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Karene Grad Steiner and refer to the Funding Opportunity Number ECA/A/E/EUR–11–07 located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All Federal award recipients and sub-recipients must maintain current registrations in the Central Contractor Registration (CCR) database and have a Dun and Bradstreet Data Universal Numbering System (DUNS) number.

Recipients and sub-recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. *All entities must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.*

You must have nonprofit status with the IRS at the time of application. *Please note:* Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to all Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to

participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (*Please note* that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Stipends, lodging, meals, accident and sickness coverage, co-pays for routine health care needs and medical emergencies, books and educational materials; and

(2) Participant travel within the United States, expenses related to the Washington, DC workshop; and

(3) Cultural activities.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV. 3f. Application Deadline and Methods of Submission:

*Application Deadline Date:* March 15, 2011.

*Reference Number:* ECA/A/E/EUR–11–07.

*Methods of Submission:* Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service

(*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2.) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

*Important note:* When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 4 copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, *Ref.:* ECA/A/E/EUR–11–07, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

IV.3f.2.—Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

**Please Note:** ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

*Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.*

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support. *Contact Center Phone:* 800–518–4726. *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

*It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.*

Optional—IV.3f.3. You may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

*V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea and program planning:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institutional Capacity/Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness and cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

*VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

*VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information:
*http://www.whitehouse.gov/omb/grants.*
*http://fa.statebuy.state.gov.*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one copy of the following reports:

*Mandatory:*

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information).

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

*All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.*

## VII. Agency Contacts

For questions about this announcement, contact: Karene Grad Steiner, U.S. Department of State, Office of Academic Exchange Programs, ECA/A/E/EUR, SA–5, Fourth Floor, ECA/A/E/EUR–11–07, 2200 C Street, NW., Washington, DC 20037, (202) 632–3237, *GradKE@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–11–07.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

## VIII. Other Information

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 26, 2011.

**Ann Stock,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 2011–2395 Filed 2–2–11; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Public Availability of the Department of Transportation FY 2010 Service Contract Inventory

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Public Availability of FY 2010 Service Contract Inventories.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117, Department of Transportation is publishing this notice to advise the public of the availability of the FY 2010

Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf*. Department of Transportation has posted its inventory and a summary of the inventory on the Department of Transportation's homepage at the following link: *http://www.dot.gov/ost/m60/serv_contract_inv.htm.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the service contract inventory should be directed to Ames Owens in the Senior Procurement Executive office at 202–366–9614 or *ames.owens@dot.gov*.

Dated: January 28, 2011.

**Ames Owens,**

*Associate Director of Commercial Services.*

[FR Doc. 2011–2365 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Deadline for Notification of Intent to Use the Airport Improvement Program (AIP) Primary, Cargo, and Nonprimary Entitlement Funds for Fiscal Year 2011

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces February 22, 2011, as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2011 entitlement funds available under Public Law 111–322 to accomplish Airport Improvement Program (AIP)-eligible projects that the sponsor previously identified through the Airports Capital Improvement Plan (ACIP) process during the preceding year. If a sponsor does not declare their intention regarding their fiscal year 2011 entitlement funds by February 22, 2011, FAA will be unable to take the necessary actions to award these funds, nor designate these funds as "protected" carryover funds. In addition, these funds will not be carried over without a legislative enactment that provides an additional AIP authorization and an extension of the FAA's spending authority from the Airport and Airway Trust Fund beyond March 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank J. San Martin, Manager, Airports Financial Assistance Division, APP–500, on (202) 267–3831.

**SUPPLEMENTARY INFORMATION:** Title 49 of the United States Code, section 47105(f), provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those airports that have had entitlement funds apportioned to them, except those nonprimary airports located in designated Block Grant States. Sponsors intending to apply for any of their available entitlement funds, including those unused from prior years, shall submit by February 22, 2011, a written indication to the designated Airports District Office (or Regional Office in regions without Airports District Offices) that they will submit a grant application prior to February 25, 2011, or by a prior date established by the designated Airport District or Regional Office.

This notice is promulgated to expedite and prioritize the grant-making process. In the past when there has been full-year funding for AIP, the FAA has established a deadline of May 1 for an airport sponsor to declare whether it will apply for, or defer use of its entitlement funding. Considering that Congress has authorized the AIP program only until March 31, 2011, *i.e.* into the middle of a fiscal year, the FAA is establishing February 22, 2011, as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2011 entitlement funds.

The AIP grant program is operating under the requirements of Public Law 111–329, the "Airport and Airway Extension Act of 2010, Part IV", enacted on December 22, 2010, which amends 49 U.S.C. 48103, to extend AIP through March 31, 2011. The FAA's expenditure authority from the Airport and Airway Trust Fund will also expire on March 31, 2011, in the absence of an additional statutory extension. Therefore, to avoid the risk of not being able to carryover funds if an additional extension is not enacted, and to allow sufficient time for accounting processing, AIP funds should be obligated in FAA's accounting records on or before March 17, 2011.

Sponsors have three options available regarding AIP grants during this period. First, sponsors may elect to make an application for a grant based on entitlements currently available to them. Sponsors that elect to take such a grant must submit grant applications to the FAA no later than February 25, 2011, in order to meet the March 17, 2011 obligation deadline. Second, sponsors may elect to wait until after the February 22, 2011 notification date for protection of carryover entitlements. However, if a sponsor does not declare their intention regarding the use of fiscal year 2011 entitlement funds by the February 22, 2011 deadline, FAA will be unable to take the necessary actions to designate these as "protected" carryover funds. In addition, these funds would not be carried over without a legislative enactment that provides additional AIP authorization for fiscal year 2011 and extends the FAA's spending authority from the Airport and Airway Trust Fund beyond March 31, 2011. Third, sponsors may elect to declare their intention to carryover the entitlements by sending written notification of such intention by February 22, 2011. Unused carryover entitlements that have been deferred will be available in fiscal year 2012 pending legislative action to further extend authorization and appropriations.

If a statutory extension beyond March 31, 2011 of the AIP program and the FAA's authority to make expenditures from the Trust Fund is enacted, additional entitlement funds may be available to sponsors. In that case, airport sponsors who did not previously declare their intention to carryover the entitlements must provide a written indication by May 1, 2011 to the designated Airports District Office (or Regional Office in regions without Airports District Offices) that they will either carryover or use their fiscal year 2011 entitlements by submitting a grant application by August 1, 2011.

Issued in Washington, DC on January 28, 2011.

**Frank J. San Martin,**

*Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming.*

[FR Doc. 2011–2381 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighth Meeting—RTCA Special Committee 217: Joint With EUROCAE WG–44 Terrain and Airport Mapping Databases

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

**DATES:** The meeting will be held February 28–March 4, 2011, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at Campus del Baix Llobregat, Building C4, C. Esteve Terradas, 7, 08860-Castelldefels, Barcelona, Spain. The contact person(s) are Maarten Uijt de Haag, Ph.D., Aerospace Research and Technology Center (CTAE) and Ohio University, e-mail: *uijtdeha@ohio.edu*, phone: +34–903–664–2644, ext 111 and mobile +34–610–612–1115 and Dagoberto Salazar, Ph.D., Grupo de Astronomia y Geomatica (gAGE), Universidad Politecnica de Catalunya (UPC), Barcelona, Spain, e-mail: *dagoberto.jose.salazar@upc.edu*. EETAC is located in Castelldefels close to the train station. Castelldefels is located outside of Barcelona and can be reached from downtown Barcelona by train/metro. If using metro station Sants Estacio, it is about 20 minutes with one train stop and from Passeig de Gracia, it is a 25 minute train ride with two train stops. More detailed transportation instructions and hotel information will be provided upon request by e-mail.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases meeting. The agenda will include:

**February 28, 2011**

- Opening Plenary Session
  - Results of December 8, 2010 PMC ToR Review
  - Presentations Not Linked to Working Group Activities
- Working Group Read-Outs
  - Applications
  - Content
  - Connectivity
  - Guidance
  - Quality, Non-Numeric
  - Quality, Numeric Requirements
  - Temporality
  - Terrain and Obstacle
  - Tiger Team WG–44/WG–78
- Document Review Sessions (Pre-Frac)
  - DO–272
  - DO–291
  - DO–276
- Additional Documentation Discussion
  - Guidance Material
  - ASRN Validation and Verification
- New Application Coordination Working Group
  - Needs
  - Format
  - Members
- Action Item Review
- Closing Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 27, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–2320 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighth Meeting: RTCA Special Committee 223: Airport Surface Wireless Communications

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

**ACTION:** Notice of RTCA Special Committee 223: Airport Surface Wireless Communications meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 223: Airport Surface Wireless Communications.

**DATES:** The meeting will be held February 22–23, 2011 from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at Harris, Customer Briefing Center, 1025 W. NASA Boulevard, Building B, Melbourne, Florida 32901, telephone 321–727–9696. Please RSVP to Glory Sprayberry, *gspraybe@harris.com,* and A. Ahrens, *aahrens@harris.com.* If you are not a U.S. citizen, please include your visitor name, company/government agency, country of citizenship, and passport number with your RSVP so that arrangements can be made with Harris security for attendance at Harris facilities.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a RTCA Special Committee 223: Airport Surface Wireless Communications meeting. Agenda:

**Tuesday, February 22, 2011**

- Tuesday Morning
- Welcome, Introductions, Administrative Remarks by Special Committee Leadership
- Designated Federal Officer (DFO): Mr. Brent Phillips
- Co-Chair: Mr. Aloke Roy, Honeywell International
- Co-Chair: Mr. Ward Hall, ITT Corporation
- Agenda Overview
- Review and Approve Plenary Seven Meeting Summary, RTCA Paper No. 009–11/SC223–016, and action item status
- AeroMACS Profile Working Group Status
- AeroMACS User Services and Applications Ad-Hoc Working Group Status
- Tuesday Afternoon
- Discussion of AeroMACS Profiles FRAC Report
- Tuesday Evening
- WiMax Forum Coordination

**Wednesday, February 23, 2011**

- Wednesday Morning—MOPS WG Breakout Session
- Review relevant MOPS Documents as reference
- Review the EUROCAE WG–82 straw man MOPS proposal
- Discuss MOPS content detail versus referencing other AeroMACS Specs
- Review RTCA MOPS Drafting Guide and make Work Assignments
- Wednesday Afternoon—Reconvene Plenary
- Recap FRAC results and prepare Plenary Report for PMC

• MOPS WG Status Report and Plenary Guidance

• Establish Agenda, Date and Place for the next plenary meeting

• Review of Meeting summary report

• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 27, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–2319 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### First Meeting: RTCA Special Committee 225: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 225 meeting: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 225: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

**DATES:** The meeting will be held March 1–2, 2011, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 225, Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

**Agenda**

*Tuesday March 1, 2011*

- Welcome/Introductions/ Administrative Remarks Workgroup Reports
  - Chair—Richard Nguyen (Boeing)
  - Program Director—Hal Moses (RTCA)
  - Designated FAA Official—Norman Pereira (FAA)
  - All participants/members
- Agenda Overview—Richard Nguyen
- RTCA Functional Overview—Hal Moses
- Current Committee Scope, Terms of Reference Overview
  - Presentation, Discussion, and Recommendations
- Determine and request participation of other members/groups
- Establish and review major milestones and deliverables
- Organization of Work, Assign Tasks and Workgroups
  - Presentation, Discussion, Recommendations
  - Assignment of Responsibilities
- Review and establish agenda for Wednesday, March 2, 2011

*Wednesday March 2, 2011*

- Review Agenda, Other Actions
- Working Groups meeting
- Working Group report, review progress and actions
- Other Business
- Establish Agenda for Next Meeting
  - Date and Place of Next Meeting

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 27, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–2318 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2011–04]**

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before February 23, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–0990 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, (425–227–2127), Standardization Branch, ANM–113, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Fran Shaver, (202) 267–4059, Office of Rulemaking, ARM–207, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 28, 2011.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petitions for Exemption

*Docket No.:* FAA–2010–0990.

*Petitioner:* The Boeing Company.

*Section of 14 CFR Affected:* § 25.809(a).

*Description of Relief Sought:* To provide relief from the "all lighting conditions" element of § 25.809(a), at Amendment 25–116, for a limited number of the Boeing Model 787–8 airplanes delivered on or before December 31, 2013. If granted, this exemption would allow sufficient time for Boeing to develop, certify, and incorporate into production a new exterior lighting system that is compliant with § 25.809(a).

[FR Doc. 2011–2296 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0003]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before April 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Albert Bratton, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* (202) 366–5769; or *e-mail: albert.bratton@dot.gov*. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Determination of Fair and Reasonable Rates for Carriage of Agriculture Cargoes on U.S.-Flag Commercial Vessels.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0514.

*Form Numbers:* MA–1025, MA–1026, and MA–172.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* This data collection requires U.S.-flag operators to submit vessel-operating costs and capital costs data to MARAD officials on an annual basis.

*Need and Use of the Information:* This information is needed by MARAD to establish fair and reasonable guideline rates for carriage of specific cargoes on U.S. vessels.

*Description of Respondents:* U.S. citizens who own and operate U.S.-flag vessels.

*Annual Responses:* 264.

*Annual Burden:* 546.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (*or EST*), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

By Order of the Maritime Administrator.

Dated: January 24, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–2418 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0008]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before *April 4, 2011.*

**FOR FURTHER INFORMATION CONTACT:** Richard Lolich, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–0704 or e-mail: *richard.lolich@dot.gov*. Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* MARAD's Marine Transportation Economic Impact Model Data Needs.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133–0538.

*Form Numbers:* MA–1051 and MA–1052.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* MARAD's Marine Transportation Economic Impact Model Data Needs Survey is designed to explore and quantify the economic contribution of the nation's marine industry to our national economy (output, employment and tax receipts) and to provide the underpinnings to calculate modal impacts on surface transportation should marine transportation become unavailable in any given region to shippers.

*Need and Use of the Information:* This collection of information will be used to obtain more detailed information on the freight-based transportation sectors than currently

available from other sources; obtain information on the change in costs (operational and handling costs) since 1999 of terminal operators and ocean-going vessels.

*Description of Respondents:* U.S. vessels and marine terminal operating companies.

*Annual Responses:* 90 responses.

*Annual Burden:* 450 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST),* Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

By order of the Maritime Administrator.
Dated: January 24, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–2416 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 1, 2010. No comments were received.

**DATES:** Comments must be submitted on or before March 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Willis, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2306; or e-mail *Kenneth.willis@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD)

*Title:* Application and Reporting Requirements for Participation in the Maritime Security Program.

*OMB Control Number:* 2133–0525.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Vessel Operators.

*Form(s):* MA–172.

*Abstract:* The Maritime Security Act of 2003 provides for the enrollment of qualified vessels in the Maritime Security Program Fleet. Applications and amendments are used to select vessels for the fleet. Periodic reporting is used to monitor adherence of contractors to program parameters.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Annual Estimated Burden Hours:* 210 hours.

*Addressee:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: MARAD Desk Officer.

*Comments are Invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator.
Dated: January 24, 2011.

**Christine Gurland,**

*Secretary, Maritime Administrator.*

[FR Doc. 2011–2415 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011 0002]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LYRIC.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before March 7, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0002. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel LYRIC is:

*Intended Commercial Use of Vessel:* "Sailing Kayak trips (passengers would Kayak to a location with a local Kayak Company and then Sail back to town aboard Sailing Vessel Lyric) and possible sailing excursions."

*Geographic Region:* "Alaska."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: January 20, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–2409 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0006]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RAVEN'S DANCE.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0006 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before March 7, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0006. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel RAVEN'S DANCE is:

*Intended Commercial Use of Vessel:* "Provide ecology centric customized tourism sailing excursions to groups of 4 persons or less at a single time. Charter duration will be dictated by the clients' schedule and can range from a few hours to multiple days. Charters will be available to clients seeking long distance coastal sailings in early and late seasons between Washington & Alaska."

*Geographic Region:* "Alaska & Washington State."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Date: January 24, 2011.

By the order of the Maritime Administrator.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–2411 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011 0001]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RADIANCE.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0001 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S.

vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before March 7, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD 2011–0001. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel RADIANCE is:

*Intended Commercial Use of Vessel:* "Recreational pleasure sailing charters & sightseeing."

*Geographic Region:* "IL, WI, MI, IN, OH, eventually the regions of operation may include, FL, CA, MD, NJ, NY, CT, RI, MA, NH, and ME."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By the Order of the Maritime Administrator.

Dated: January 20, 2011.

**Christine Gurland,**

*Secretary, Maritime Administrator.*

[FR Doc. 2011–2413 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011 0005]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOLCE VITA.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0005 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before March 7, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0005. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, e-mail *Joann.Spittle@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel DOLCE VITA is:

*Intended Commercial Use of Vessel:* "Coastal sailing day charters from Sarasota, FL to Cabbage Key and Sanibel Island."

*Geographic Region:* "Florida."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By order of the Maritime Administrator.

Dated: January 24, 2011.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–2407 Filed 2–2–11; 8:45 am]

**BILLING CODE 4910–81–P**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**[Docket ID OCC–2011–0005]**

**FEDERAL RESERVE SYSTEM**

**[Docket No. R–1357]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**[Docket ID OTS–2011–0001]**

**FARM CREDIT ADMINISTRATION**

**NATIONAL CREDIT UNION ADMINISTRATION**

## Registration of Mortgage Loan Originators

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA).

**ACTION:** Notice.

**SUMMARY:** The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are issuing a notice announcing that the initial registration period for Federal registrations required by the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act) and the Agencies' implementing rules issued July 28, 2010, will run from January 31, 2011, through July 29, 2011. The S.A.F.E. Act and the Agencies' final rules require employees of banks, savings associations, credit unions, or Farm Credit System (FCS) institutions as well as certain of their subsidiaries that are regulated by a Federal banking agency or the FCA (collectively, Agency-regulated institutions) who act as a residential mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (Registry), obtain a unique identifier from the Registry, and maintain this registration.

**DATES:** The initial registration period began on January 31, 2011, and will end on July 29, 2011.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Michele Meyer, Assistant Director, Heidi Thomas, Special Counsel, or Patrick T. Tierney, Counsel, Legislative and Regulatory Activities, (202) 874–5090, and Nan Goulet, Senior Advisor, Large Bank Supervision, (202) 874–5224, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Anne Zorc, Counsel, Legal Division, (202) 452–3876; or Stanley Rediger, Supervisory Financial Analyst, (202) 452–2629; or Frank P. Mongiello, Technology Delivery and Support Manager, (202) 452–6448, Division of Banking Supervision & Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

*FDIC:* Thomas F. Lyons, Examination Specialist, (202) 898–6850, Victoria Pawelski, Acting Section Chief, Compliance Policy, (202) 898–3571, Sharmae Gambrel, Review Examiner (Compliance), (413) 731–6457, x4541, or John P. Kotsiras, Financial Analyst, (202) 898–6620, Division of Supervision and Consumer Protection; or Richard Foley, Counsel, (202) 898–3784, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* Charlotte M. Bahin, Special Counsel (Special Projects), (202) 906–6452, Vicki Hawkins-Jones, Acting Deputy Chief Counsel, Regulations and Legislation Division, (202) 906–7034, Richard Bennett, Senior Compliance Counsel, (202) 906–7409, and Rhonda Daniels, Director, Consumer Regulations, (202) 906–7158, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

*FCA:* Gary K. Van Meter, Acting Director, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4434, or Richard A. Katz, Senior Counsel, or Jennifer Cohn, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

*NCUA:* Regina Metz, Staff Attorney, Office of General Counsel, 703–518–6561, or Lisa Dolin, Program Officer, Division of Supervision, Office of Examination and Insurance, 703–518–6360, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

**SUPPLEMENTARY INFORMATION:**

### Background

The S.A.F.E. Act,[1] enacted on July 30, 2008, mandates a nationwide licensing and registration system for mortgage loan originators. Specifically, the Act requires: (1) All States to provide for a licensing and registration regime for State-regulated mortgage loan originators; and (2) the Agencies to develop and maintain a system for registering mortgage loan originators employed by Agency-regulated institutions (Federal registration). The S.A.F.E. Act specifically prohibits an individual from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually a State license or a Federal registration and a unique identifier. The S.A.F.E. Act requires that State licensing and Federal registration must be accomplished through the Nationwide Mortgage Licensing System and Registry (Registry).

The Agencies published a final rule on July 28, 2010, to implement the S.A.F.E. Act.[2] Specifically, the final rule requires mortgage loan originators employed by Agency-regulated institutions to register with the Registry and maintain their registration. Pursuant to the S.A.F.E. Act, a mortgage loan originator also is required to obtain a unique identifier through the Registry that will remain with that originator, regardless of changes in employment. Furthermore, the final rule requires mortgage loan originators (and their employing Agency-regulated institutions) to provide these unique identifiers to consumers in certain circumstances. The rule provides an exception to these requirements for originators who originate a *de minimis* number of residential mortgage loans.

In addition, the final rule provides that an Agency-regulated institution must require its employees who are mortgage loan originators to comply with these requirements and specifically prohibits the institution from permitting its employees to act as mortgage loan originators unless registered with the Registry pursuant to the final rule and the S.A.F.E. Act. The rule requires Agency-regulated institutions to adopt and follow written policies and procedures to assure compliance with the registration requirements.

The final rule was effective on October 1, 2010. However, because the necessary modifications to the Registry were not to be completed by that date, the final rule provided that Agency-regulated institutions and their employees were not required to comply with the final rule's registration

[1] The S.A.F.E. Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), *codified at* 12 U.S.C. 5101–5116.

[2] 75 FR 44656. The Agencies' rules are codified at 12 CFR part 34 (OCC), 12 CFR parts 208 and 211 (Board), 12 CFR part 365 (FDIC), 12 CFR part 563 (OTS), 12 CFR part 610 (FCA), and 12 CFR parts 741 and 761 (NCUA). Because the Agencies' rules use consistent section numbering, relevant sections are cited, for example, as "section _.103."

requirements until notified to do so by the Agencies.

Specifically, § __.103(a)(3) of the final rule provides that the 180-day implementation period for initial registrations will begin on the date the Agencies provide in a public notice that the Registry is accepting initial registrations. The Agencies jointly announced on January 31st, 2011 that the initial registration period will run from January 31, 2011 through July 29, 2011.[3] After this 180-day period expires, any existing employee or newly hired employee of an Agency-regulated institution who is subject to the registration requirements will be prohibited from originating residential mortgage loans without first meeting such requirements.

Section 1504 of the S.A.F.E. Act (12 U.S.C. 5103) requires that mortgage loan originators maintain their registration annually. To implement this requirement, section __.103(b)(1)(i) of the final rule requires that a registered mortgage loan originator must renew his or her registration with the Registry during the annual renewal period, November 1 through December 31 of each year. However, § __.103(b)(3) of the final rule provides that a mortgage loan originator is not required to renew his or her registration during this annual renewal period if registration was completed less than six months prior to the end of the renewal period.

Further information regarding the Registry and the registration process is available at the Registry's Web site: *http://mortgage.nationwidelicensingsystem.org/fedreg/Pages/default.aspx.*

Dated: January 24, 2011.

**John Walsh,**

*Acting Comptroller of the Currency.*

By Order of the Board of Governors of the Federal Reserve System, January 28, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC on January 26, 2011.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: January 19, 2011.

By the Office of Thrift Supervision.

**John E. Bowman,**

*Acting Director.*

Dated: January 13, 2011.

**Dale Aultman,**

*Secretary,*

Farm Credit Administration Board.

Dated: January 28, 2011.

**Mary F. Rupp,**

*Secretary to the Board, National Credit Union Administration.*

[FR Doc. 2011–2378 Filed 2–2–11; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P**

[3] *See* joint press release issued on January 31, 2011 at *http://www.occ.gov/news-issuances/news-releases/2011/index-2011-news-releases.html; http://www.federalreserve.gov/newsevents/default.htm; http://www.fdic.gov/news/news/press/2011/index.html; http://www.ots.treas.gov/?p=NewsEvents; http://www.fca.gov/newsr.nsf/2011?OpenView; http://www.ncua.gov/NewsPublications/News/PressRelease.aspx; and http://www.fca.gov/newsr.nsf/2011?OpenView.*

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Applications for Membership on the Electronic Tax Administration Advisory Committee (ETAAC)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Request for Applications.

**SUMMARY:** The Internal Revenue Service (IRS) requests applications of individuals to be considered for membership on the Electronic Tax Administration Advisory Committee (ETAAC). Nominations of qualified individuals may come from associations and should describe and document the applicant's qualifications for ETAAC membership. An application and resume are required. Submit a short statement as required in Part II of the application and include recent examples of specific expertise in e-file security, tax software and accuracy. See the ETAAC application, Form 13768 for more details.

The ETAAC provides continued input into the development and implementation of the IRS' strategy for electronic tax administration. The ETAAC also provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements.

The Director, Electronic Tax Administration (ETA) and Refundable Credits will assure that the size and organizational representation of the committee is balanced to include industry representatives from various groups. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications and expertise.

**DATES:** Complete application packages must be received by March 28, 2011.

**ADDRESSES:** Application packages should include: a letter of nomination, application, short statement, and resume. Submit the application package using one of the following methods:

- *E-Mail:* Send to *etaac@irs.gov.*
- *Fax:* Send via facsimile to (202) 283–2845 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Ms. Cassandra Daniels, (202) 283–2178 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** ETAAC was authorized under the Federal Advisory Committee Act, Public Law and was established as required by the Internal Revenue Service Restructuring and Reform Act of 1998, Title II, Section 2001(b)(2). The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. The ETAAC will meet approximately four times in Washington, DC and provide an Annual report to Congress each June on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns.

Receipt of applications will be acknowledged. Only the best qualified applicants will undergo tax checks and background investigations. Interviews will be scheduled for those who pass these checks.

Members will serve a three-year term on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. All travel expenses within government guidelines will be reimbursed such as airfare, per diem, and transportation to and from airports, train stations, etc. Members may not be Federally registered lobbyists and must pass an IRS tax compliance check and Federal Bureau of Investigation (FBI) background investigation.

Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities. The Secretary of Treasury will review the recommended candidates and approve the final selections.

Dated: January 28, 2011.

**Diane Fox,**

*Acting Chief, Relationship Management.*

[FR Doc. 2011–2329 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, March 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, March 8, 2011, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2345 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, March 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, March 16, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2344 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, March 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Wednesday, March 2, 2011, at 3:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2343 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, March 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, March 15, 2011, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2341 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, March 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Patricia Robb at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Thursday, March 17, 2011, at 11:30 a.m., Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2339 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, March 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Timothy Shepard at 1–888–912–1227 or 206–220–6095.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, March 2, 2011, at 11 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information, please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2335 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, March 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1–888–912–1227 or 206–220–6098.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, March 17, 2011, at 2 p.m., Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2332 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer

Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be Monday, March 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marianne Ayala at 1–888–912–1227 or 954–423–7978.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Monday, March 28, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information, please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2330 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, March 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or 954–423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, March 8, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2331 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, March 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ellen Smiley at 1–888–912–1227 or 414–231–2360.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, March 22, 2011, at 2 p.m., Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2333 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, March 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Janice Spinks at 1–888–912–1227 or 206–220–6098.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be held Wednesday, March 23, 2011, at 9 a.m., Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2334 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, March 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Timothy Shepard at 1–888–912–1227 or 206–220–6095.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be held Tuesday, March 22, 2011, at 9 a.m., Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2336 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, March 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, March 3, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2338 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, March 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, March 24, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2340 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, March 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer

Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, March 08, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 28, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–2342 Filed 2–2–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the OTS 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. On October 5, 2010, the OTS requested public comment for 60 days (75 FR 61563) [1] on a proposal to extend, with revisions, the Thrift Financial Report (TFR), which is currently an approved collection of information. On November 17, 2010, the OTS published an amended notice to correct an error in the initial notice (75 FR 70355).[2] These notices described regulatory reporting revisions proposed for the TFR. After considering the comments received on the proposal, the OTS will proceed with most, but not all, of the reporting changes that had been proposed and will also revise two other TFR items in response to commenters' recommendations. For some of the reporting changes that the OTS plans to implement, limited modifications have been made to the original proposals in response to the comments. All proposed changes to the TFR for 2011 that would increase the differences between the TFR and the Call Report have been eliminated. Proposed changes to the TFR for 2011, announced on October 5, 2010 (75 FR 61563), included changes that parallel proposed changes to the Call Report as well as changes unique to the TFR. Proposed changes unique to the TFR included proposed data collections for classified assets by major loan category and loan loss allowances by major loan category. The OTS will curtail all proposed TFR changes that increase differences with the Call Report in an effort to reduce the initial burden of converting to the Call Report. The changes are proposed to become effective in March 2011.

**DATES:** Submit written comments on or before March 7, 2011. The regulatory reporting revisions described herein take effect on March 31, 2011.

**ADDRESSES:** Send comments, referring to the collection by "1550–0023 (TFR Revisions—2011)", to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974, and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* or hand deliver comments to the Guard's Desk, east lobby entrance, 1700 G Street, NW., on business days between 9 a.m. and 4 p.m. All comments should refer to "TFR Revisions—2011, OMB No. 1550–0023." OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills, OTS Clearance Officer, at *ira.mills@ots.treas.gov,* (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

You can obtain a copy of the 2011 Thrift Financial Report forms from the OTS Web site at *http://www.ots.treas.gov/?p=ThriftFinancialReports* or you may request it by electronic mail from tfr.instructions@ots.treas.gov. You can request additional information about this proposed information collection from James Caton, Managing Director, Economics and Industry Analysis Division, (202) 906–5680, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

*Report Title:* Thrift Financial Report.

*OMB Number:* 1550–0023.

*Form Number:* OTS 1313.

*Statutory Requirement:* 12 U.S.C. 1464(v) imposes reporting requirements for savings associations. Except for selected items, these information collections are not given confidential treatment.

*Type of Review:* Revision of currently approved collections.

*Affected Public:* Savings Associations.

*Estimated Number of Respondents and Recordkeepers:* 741.

*Estimated Burden Hours per Respondent:* 60.2 hours average for quarterly schedules and 2.0 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

*Estimated Frequency of Response:* Quarterly.

*Estimated Total Annual Burden:* 186,360 hours.

**Abstract**

OTS is proposing to revise and extend for three years the TFR, which is currently an approved collection of information.

All OTS-regulated savings associations must comply with the information collections described in this notice. Savings associations submit TFR data to the OTS each calendar quarter or less frequently if so stated. Except for selected items, these information collections are not given confidential treatment.

OTS uses TFR data in monitoring the condition, performance, and risk profile of individual institutions and systemic risk among groups of institutions and the industry as a whole. TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The OTS

[1] Link to October 5, 2010 proposal published at 75 FR 61563: *http://edocket.access.gpo.gov/2010/pdf/2010-24883.pdf.*

[2] Link to November 17, 2010 proposal published at 75 FR 70355: *http://edocket.access.gpo.gov/2010/pdf/2010-29004.pdf.*

uses TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. TFR data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and semiannual assessment fees.

**Current Actions**

*I. Overview*

On October 5, 2010, the OTS requested comment on proposed revisions to the TFR (75 FR 61563). On November 17, 2010, the OTS published an amended notice to correct an error in the initial notice (75 FR 70355). The OTS proposed to implement certain changes to the TFR requirements as of March 31, 2011, to provide data needed for reasons of safety and soundness or other public purposes. The proposed revisions would assist the OTS in gaining a better understanding of savings associations' credit and liquidity risk exposures, primarily through enhanced data on lending and securitization activities and sources of deposits.

The OTS received comments from 3 respondents: A savings association, a bankers' association, and a U.S. government agency. Respondents tended to comment on one or more specific aspects of the proposal rather than addressing each individual proposed TFR revision. The bankers' association reported that its "members have expressed no concerns with many of the OTS's proposed revisions," but it suggested that the OTS make several changes to the revisions. The savings association was opposed to the OTS proposal to collect data on deposits obtained through deposit listing services. The U.S. government agency expressed support for the collection of data in TFR Schedules SO and DI which it uses for economic and statistical analysis.

The following section of this notice describes the proposed TFR changes and discusses the OTS's evaluation of the comments received on the proposed changes, including modifications that the OTS has decided to implement in response to those comments. The following section also addresses the OTS's response to the comments from the bankers' association concerning the definition of core deposits, which was not an element of the OTS's October 5, 2010, TFR proposal.

In summary, after considering the comments received on the proposed TFR revisions, the OTS plans to move forward as of the March 31, 2011, report date with fewer of the proposed reporting changes after making certain modifications in response to the comments. All proposed changes to the TFR for 2011 that would increase the differences between the TFR and the Call Report have been eliminated. Accordingly, the OTS will not implement the items for automobile loans as had been proposed. The OTS will not add items to Schedule SC for additional detail on commercial mortgage-backed securities issued or guaranteed by U.S. government agencies and sponsored agencies. In addition, the OTS has decided not to add the proposed breakdown of deposits into deposits of individuals and deposits of partnerships and corporations. The proposed breakdown of life insurance assets into general and separate account assets will not be added to the TFR. The OTS will not add the additional items for trust preferred securities. The OTS will not implement the detailed breakdown of general, specific, and total valuation allowances by major loan type. The proposed breakdown of classified assets by major loan type will not be implemented.

Furthermore, the specific wording of the captions for the new or revised TFR data items and the numbering of these data items discussed in this notice should be regarded as preliminary.

*Type of Review:* Revision and extension of currently approved collections.

*II. Discussion of Proposed TFR Revisions*

The OTS received comments expressing support for, or no comments specifically addressing, the following revisions, and therefore these revisions will be implemented effective March 31, 2011, as proposed:

- Breakdowns of the existing items for loans and real estate owned (REO) covered by FDIC loss-sharing agreements by loan and REO category in Schedule SI—Consolidated Supplemental Information, along with a breakdown of the existing items in Schedule PD—Consolidated Past Due and Nonaccrual, for reporting past due and nonaccrual U.S. Government-guaranteed loans to segregate those covered by FDIC loss-sharing agreements (which would be reported by loan category) from other guaranteed loans. The categories of covered loans to be reported would be (1) 1–4 family residential construction loans, (2) Other construction loans and all land development and other land loans, (3) Loans secured by farmland, (4) Revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit, (5) Closed-end loans secured by first liens on 1–4 family residential properties, (6) Closed-end loans secured by junior liens on 1–4 family residential properties, (7) Loans secured by multifamily (5 or more) residential properties, (8) Loans secured by owner-occupied nonfarm nonresidential properties, (9) Loans secured by other nonfarm nonresidential properties, (10) Commercial and industrial loans, (11) Consumer credit cards, (12) Consumer automobile loans, (13) Other consumer loans, and (14) All other loans and all leases (including loans to finance agricultural production and other loans to farmers).
- New items for the total assets of captive insurance and reinsurance subsidiaries in Schedule SI—Consolidated Supplemental Information;
- A new item in Schedule SO for service charges on deposit accounts;
- A new item in Schedule CCR for qualifying noncontrolling (minority) interests in consolidated subsidiaries; and
- A change in reporting frequency from annual to quarterly for the data reported in Schedule FS, Fiduciary and Related Services, on collective investment funds and common trust funds for those banks that currently report fiduciary assets and income quarterly, *i.e.,* banks with fiduciary assets greater than $250 million or gross fiduciary income greater than 10 percent of bank revenue.

The OTS received one or more comments specifically addressing or otherwise relating to each of the following proposed revisions:

- A breakdown by loan category of the existing items in TFR Schedule VA that are troubled debt restructurings with valuation allowances added during the quarter or that are in compliance with their modified terms as well as a breakdown by loan category of the existing items in TFR Schedule PD that are troubled debt restructurings and are past due 30–89 days, 90 days or more, or in nonaccrual status;
- New items for the estimated amount and daily average of nonbrokered deposits obtained through the use of deposit listing service companies in Schedule DI;
- A breakdown of the existing items for deposits of individuals, partnerships, and corporations between deposits of individuals and deposits of partnerships and corporations in Schedule DI;

• A breakdown of general, specific, and total valuation allowances by major loan type in Schedule VA;

• A new Schedule VIE, Variable Interest Entities, for reporting the categories of assets of consolidated variable interest entities (VIEs) that can be used only to settle the VIEs' obligations, the categories of liabilities of consolidated VIEs without recourse to the savings association's general credit, and the total assets and total liabilities of other consolidated VIEs included in the savings association's total assets and total liabilities, with these data reported separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

The comments related to each of these proposed revisions are discussed in Sections II.A. through II.D. of this notice along with the OTS's response to these comments.

A. Troubled Debt Restructurings

The OTS proposed that savings association report additional detail on loans that have undergone troubled debt restructurings in Schedules VA and PD. More specifically, in Schedule VA total troubled debt restructured during the quarter and the amount of total troubled debt restructured in Schedule SC in compliance with modified terms, and in Schedule PD that is past due by 30 to 89 days or 90 days or more or in nonaccrual status, would be broken out to provide information on restructured troubled loans for many of the loan categories reported in Schedule SC.

In the aggregate, troubled debt restructurings for all insured institutions have grown from $6.9 billion at year-end 2007, to $24.0 billion at year-end 2008, to $58.1 billion at year-end 2009, with a further increase to $80.3 billion as of September 30, 2010. The proposed additional detail on troubled debt restructurings in Schedules VA and PD would enable the OTS to better understand the level of restructuring activity at savings associations, the categories of loans involved in this activity, and, therefore, whether savings associations are working with their borrowers to modify and restructure loans.

It is also anticipated that the various loan categories will experience continued workout activity in the coming months given that most asset classes have been adversely impacted by the recent recession. This impact is evidenced by the increase in past due and nonaccrual assets across virtually all asset classes during the past two to three years.

The TFR data for troubled debt restructurings are intended to capture data on loans that have undergone troubled debt restructurings as that term is defined in U.S. generally accepted accounting principles (GAAP).

The OTS received comments from a bankers' association on the proposed additional detail on loans that have undergone troubled debt restructurings. The commenter recommended the OTS defer the proposed troubled debt restructuring revisions, including the new breakdowns by loan category, until the FASB finalizes proposed clarifications to its standards for accounting for troubled debt restructurings by creditors.[3]

The accounting standards for troubled debt restructurings are set forth in ASC Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors (formerly FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," as amended by FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan"). ASC Subtopic 310–40 is the accounting basis for the current reporting of restructured troubled loans in existing Schedules VA and PD. To the extent the clarifications emanating from the FASB proposed accounting standards update may result in savings associations having to report certain loans as troubled debt restructurings that had not previously been identified as such, this accounting outcome will arise irrespective of the proposed breakdown of the loan categories in Schedules VA and PD. Therefore, the OTS will implement the new breakdown for the reporting of troubled debt restructurings modified to reflect the breakdown to be added to the Call Report effective with the March 2011 reporting period.

Specifically, the OTS will add the breakdown by loan category in Schedule VA for loans restructured in troubled debt restructurings that are in compliance with their modified terms (included in Schedule SC and not reported as past due or nonaccrual in Schedule PD) for loans secured by (1) Construction, land development, and other land loans for 1–4 family residential construction loans, (2) Other construction loans and all land development and other land loans, (3) 1–4 family residential properties, (4) Multifamily (5 or more) residential properties, (5) Owner-occupied nonfarm residential properties, (6) Other nonfarm residential properties, (7) Commercial and industrial loans, and (8) All other loans.

B. Nonbrokered Deposits Obtained Through the Use of Deposit Listing Service Companies

In its semiannual report to the Congress covering October 1, 2009, through March 31, 2010, the FDIC's Office of Inspector General addressed causes of bank failures and material losses and noted that "[f]ailed institutions often exhibited a growing dependence on volatile, non-core funding sources, such as brokered deposits, Federal Home Loan Bank advances, and Internet certificates of deposit."[4] At present, savings associations report in Schedule DI information on their funding in the form of brokered deposits. Data on Federal Home Loan Bank advances are reported in Schedule SC. These data are an integral component of OTS's analyses of an individual institution's liquidity and funding, including the institution's reliance on non-core sources to fund its activities.

Deposit brokers have traditionally provided intermediary services for financial institutions and investors. However, the Internet, deposit listing services, and other automated services now enable investors who focus on yield to easily identify high-yielding deposit sources. Such customers are highly rate sensitive and can be a less stable source of funding than deposit customers with a more typical relationship to the institution. Because they often have no other relationship with the bank, these customers may rapidly transfer funds to other institutions if more attractive returns become available.

The OTS expects each institution to establish and adhere to a sound liquidity and funds management policy. The institution's board of directors, or a committee of the board, also should ensure that senior management takes the necessary steps to monitor and control liquidity risk. This process includes establishing procedures, guidelines, internal controls, and limits for managing and monitoring liquidity and reviewing the institution's liquidity position, including its deposit structure, on a regular basis. A necessary prerequisite to sound liquidity and funds management decisions is a sound management information system, which provides certain basic information including data on non-relationship funding programs, such as brokered deposits, deposits obtained through the

[3] FASB Proposed Accounting Standards Update (ASU): Receivables (Topic 310), Clarifications to Accounting for Troubled Debt Restructurings by Creditors.

[4] *http://www.fdicig.gov/semi-reports/sar2010mar/OIGSar2010.pdf.*

Internet or other types of advertising, and other similar rate sensitive deposits. Thus, an institution's management should be aware of the number and magnitude of such deposits.

To improve the OTS's ability to monitor potentially volatile funding sources, the OTS proposed to close a gap in the information currently available through the TFR by adding two new items to Schedule DI in which savings associations would report the estimated amount and average daily balances of deposits obtained through the use of deposit listing services that are not brokered deposits.

A deposit listing service is a company that compiles information about the interest rates offered on deposits, such as certificates of deposit, by insured depository institutions. A particular company could be a deposit listing service (compiling information about certificates of deposits) as well as a deposit broker (facilitating the placement of certificates of deposit). According to FDIC Advisory Opinion 04–04 dated July 28, 2004,[5] a deposit listing service is not a deposit broker if all of the following four criteria are met:

(1) The person or entity providing the listing service is compensated solely by means of subscription fees (*i.e.,* the fees paid by subscribers as payment for their opportunity to see the rates gathered by the listing service) and/or listing fees (*i.e.,* the fees paid by depository institutions as payment for their opportunity to list or "post" their rates). The listing service does not require a depository institution to pay for other services offered by the listing service or its affiliates as a condition precedent to being listed.

(2) The fees paid by depository institutions are flat fees: They are not calculated on the basis of the number or dollar amount of deposits accepted by the depository institution as a result of the listing or "posting" of the depository institution's rates.

(3) In exchange for these fees, the listing service performs no services except (A) the gathering and transmission of information concerning the availability of deposits; and/or (B) the transmission of messages between depositors and depository institutions (including purchase orders and trade confirmations). In publishing or displaying information about depository institutions, the listing service must not attempt to steer funds toward particular institutions (except that the listing service may rank institutions according to interest rates and also may exclude institutions that do not pay the listing fee). Similarly, in any communications with depositors or potential depositors, the listing service must not attempt to steer funds toward particular institutions.

(4) The listing service is not involved in placing deposits. Any funds to be invested in deposit accounts are remitted directly by the depositor to the insured depository institution and not, directly or indirectly, by or through the listing service.

The OTS received two comments (from one savings association and one bankers' association) that addressed the proposed collection of the estimated amount of deposits obtained through the use of deposit listing services that are not brokered deposits. Both commenters were opposed to the proposal. The savings association recommended the OTS withdraw this proposal because not all listing services serve the same types of customers; not all listing service deposits can be easily tracked and controlled; not all listing services represent a source of high-yield deposits; and the collection of the proposed items may dissuade bank examiners from appropriately evaluating the volatility and rate sensitivity of deposits reported in the items. The bankers' association that objected to the proposed item cited the difficulty in identifying and tracking deposits obtained from listing services.

The OTS acknowledges that, unless a deposit listing service offers deposit tracking to its savings association customers, the precise amount of deposits obtained through the use of listing services is not readily determinable. It was for this reason that the OTS specifically proposed that savings associations report the estimated amount of listing service deposits.

In its comment, the savings association expressed concern that the addition of the proposed items to the TFR may cause examiners to label all deposits reported in the new item as high-risk, high-volatility funding. OTS notes, however, that the estimated amounts of deposits obtained through deposit listing services, and how the estimated amounts change over time, will serve as additional data points for examiners as they begin their comprehensive fact-specific evaluations of the stability of savings associations' deposit bases. The collection of the proposed item is not intended to eliminate examiners' assessments of depositors' characteristics, and examiners will continue to make a thorough analysis of the risk factors associated with a savings association's depositors and how savings association management identifies, measures, manages, and controls these risks. Information on the level and trend of an individual savings association's deposits obtained through the use of listing services also will assist examiners in planning how they will evaluate liquidity and funds management during examinations of the savings association. From a surveillance perspective, significant changes in a savings association's use of listing service deposits may trigger supervisory follow-up prior to the next planned examination.

After considering the comments on its proposal, the OTS has decided to proceed with the proposed new item for the estimated amount of deposits obtained through the use of deposit listing services, but will eliminate the proposed new line for the average daily deposits of deposits obtained through the use of deposit listing services. This is consistent with the new item to be added to the Call Report for banks effective as of the March 31, 2011 reporting period. As mentioned above, the new item is not intended to capture all deposits obtained through the Internet. For example, it would not capture deposits that a savings association receives because a person or entity has seen the rates the savings association has posted on its own Web site. It also would not capture deposits received because a person or entity has seen rates on a rate-advertising Web site that has picked up and posted the savings association's rates on its site without the savings association's authorization. Accordingly, the final instructions will state that the objective of the item is to collect the estimated amount of deposits obtained as a result of action taken by the savings association to have its deposit rates listed by a listing service, and the listing service is compensated for this listing either by the savings association whose rates are being listed or by the persons or entities who view the listed rates. However, the final instructions for the item also will indicate that the actual amount of nonbrokered listing service deposits, rather than an estimate, should be reported for those deposits acquired through the use of a service that offers deposit tracking. A savings association should establish a reasonable and supportable estimation process for identifying listing service deposits that meets these reporting parameters and apply this process consistently over time.

[5] *http://www.fdic.gov/regulations/laws/rules/4000-10280.html.*

C. Deposits of Individuals, Partnerships, and Corporations

Savings associations reporting through the TFR do not currently report separate breakdowns of their transaction and nontransaction accounts by category of depositor. The recent crisis has demonstrated that business depositors' behavioral characteristics are significantly different than the behavioral characteristics of individuals. Thus, separate reporting of deposits of individuals versus deposits of partnerships and corporations would enable the OTS to better assess the liquidity risk profile of institutions given differences in the relative stability of deposits from these two sources.

As proposed, two items would be added to Schedule DI for deposits of individuals and deposits of partnerships and corporations. Under this proposal, a savings association should treat accounts currently reported in total deposits on Schedule SC as deposits of individuals if the depositor's taxpayer identification number, as maintained on the account in the savings association's records, is a Social Security number (or an Individual Taxpayer Identification number [6]) should be treated as deposits of individuals. In general, all other accounts should be treated as deposits of partnerships and corporations.

The OTS received one comment from a bankers' association on the proposal for separate reporting of deposits of individuals versus deposits of partnerships and corporations. The commenter suggested the proposed change would be too labor intensive for some savings associations and asked that the OTS not implement the change. The commenter indicated that if the new deposit breakdown were adopted, it should be deferred until March 31, 2012, to allow time for savings associations to make the necessary systems changes. The bankers' association also recommended that all certified and official checks be reported together in one of the two depositor categories.

The OTS has reconsidered its proposal for savings associations to report deposits of individuals separately from deposits of partnerships and corporations in Schedule DI. Although the OTS continues to believe that information distinguishing between deposits of individuals and deposits of partnerships and corporations would enhance the OTS's ability to assess the liquidity risk profile of institutions, it acknowledges the proposed reporting revision could necessitate extensive programming changes and impose significant reporting burden. As a result of this reevaluation, the OTS has decided not to implement this proposed TFR revision.

D. Variable Interest Entities

In June 2009, the FASB issued accounting standards that have changed the way entities account for securitizations and special purpose entities. ASU No. 2009–16 (formerly FAS 166) revised ASC Topic 860, Transfers and Servicing, by eliminating the concept of a "qualifying special-purpose entity" (QSPE) and changing the requirements for derecognizing financial assets. ASU No. 2009–17 (formerly FAS 167) revised ASC Topic 810, Consolidation, by changing how a bank or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, *i.e.,* a "variable interest entity" (VIE), should be consolidated. For most banks and savings associations, ASU Nos. 2009–16 and 2009–17 took effect January 1, 2010.

Under ASC Topic 810, as amended, determining whether a savings association is required to consolidate a VIE depends on a qualitative analysis of whether that savings association has a "controlling financial interest" in the VIE and is therefore the primary beneficiary of the VIE. The analysis focuses on the savings association's power over and interest in the VIE. With the removal of the QSPE concept from generally accepted accounting principles that was brought about in amended ASC Topic 860, a savings association that transferred financial assets to an SPE that met the definition of a QSPE before the effective date of these amended accounting standards was required to evaluate whether, pursuant to amended ASC Topic 810, it must begin to consolidate the assets, liabilities, and equity of the SPE as of that effective date. Thus, when implementing amended ASC Topics 860 and 810 at the beginning of 2010, savings associations began to consolidate certain previously off-balance sheet securitization vehicles, asset-backed commercial paper conduits, and other structures. Going forward, savings associations with variable interests in new VIEs must evaluate whether they have a controlling financial interest in these entities and, if so, consolidate them. In addition, savings associations must continually reassess whether they are the primary beneficiary of VIEs in which they have variable interests.

The OTS's TFR instructional guidance advises savings associations that must consolidate VIEs to report the assets and liabilities of these VIEs on the TFR balance sheet (Schedule SC) in the balance sheet category appropriate to the asset or liability. However, ASC paragraph 810–10–45–25 [7] requires a reporting entity to present "separately on the face of the statement of financial position: a. Assets of a consolidated variable interest entity (VIE) that can be used only to settle obligations of the consolidated VIE [and] b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary." This requirement has been interpreted to mean that "each line item of the consolidated balance sheet should differentiate which portion of those amounts meet the separate presentation conditions." [8] In requiring separate presentation for these assets and liabilities, the FASB agreed with commenters on its proposed accounting standard on consolidation that "separate presentation * * * would provide transparent and useful information about an enterprise's involvement and associated risks in a variable interest entity." [9] The OTS concurs that separate presentation would provide similar benefits to it and other TFR users.

Consistent with the presentation requirements discussed above and with the proposal of the other Federal banking agencies for the Call Report, the OTS proposed to add a new Schedule VIE, Variable Interest Entities, to the TFR. In Schedule VIE savings associations would report a breakdown of the assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs and liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the reporting savings association. The following proposed categories for these assets and liabilities would include some of the same categories presented on the TFR balance sheet (Schedule SC): Cash and balances due from depository institutions, Held-to-maturity securities; Available-for-sale securities; Securities purchased under agreements to resell, Loans and leases held for sale; Loans and leases, net of

[6] An Individual Taxpayer Identification number is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a Social Security number. It is a 9-digit number, beginning with the number "9," in a format similar to a Social Security number.

[7] Formerly paragraph 22A of FIN 46(R), as amended by FAS 167.

[8] Deloitte & Touche LLP, "Back on-balance sheet: Observations from the adoption of FAS 167," May 2010, page 4 (*http://www.deloitte.com/view/en_US/us/Services/audit-enterprise-risk-services/Financial-Accounting-Reporting/f3a70ca28d9f8210VgnVCM200000bb42f00aRCRD.htm*).

[9] *See* paragraphs A80 and A81 of FAS 167.

unearned income; Allowance for loan and lease losses; Trading assets (other than derivatives); Derivative trading assets; Other real estate owned; Other assets; Securities sold under agreements to repurchase; Derivative trading liabilities; Other borrowed money (other than commercial paper); Commercial paper; and Other liabilities. These assets and liabilities would be presented separately for securitization vehicles, asset-backed commercial paper conduits, and other VIEs.

In addition, the OTS proposed to include two separate items in new Schedule VIE in which savings associations would report the total amounts of all other assets and all other liabilities of consolidated VIEs (*i.e.,* all assets of consolidated VIEs that are not dedicated solely to settling obligations of the VIE and all liabilities of consolidated VIEs for which creditors have recourse to the general credit of the reporting savings association). The collection of this information would help the OTS understand the total magnitude of consolidated VIEs. These assets and liabilities also would be reported separately for securitization vehicles, asset-backed commercial paper conduits, and other VIEs.

The asset and liability information collected in Schedule VIE would represent amounts included in the reporting savings association's consolidated assets and liabilities reported on Schedule SC after eliminating intercompany transactions.

The OTS received one comment from a bankers' association that addressed proposed Schedule VIE. The bankers' association asked that the OTS consider the burden this new reporting schedule would impose on smaller savings associations and asked that the OTS consider some relief from compliance for smaller savings associations to lessen their burden.

Because the TFR balance sheet is completed on a consolidated basis, the VIE amounts that savings associations would report in new Schedule VIE are amounts that, through the consolidation process, already must be reported in the appropriate balance sheet asset and liability categories. These balance sheet categories, generally, have been carried over into Schedule VIE. Schedule VIE distinguishes between assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs and assets not meeting this condition as well as liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the reporting bank and liabilities not meeting this condition. This distinction is based on existing disclosure requirements applicable to financial statements prepared in accordance with U.S. GAAP. Savings associations likely to have material amounts of consolidated VIE assets and liabilities to report have been subject to these disclosure requirements for one year. Thus, these savings associations should have a process in place, even if manual, for segregating VIE assets and liabilities based on this distinction.

The OTS recognizes that the proposed separate reporting of consolidated VIE assets and liabilities by the type of VIE activity, *i.e.,* securitization vehicles, ABCP conduits, and other VIEs, goes beyond the disclosure requirements in U.S. GAAP. Otherwise, the proposed data requirements for Schedule VIE have been based purposely on the GAAP framework. Thus, the OTS has concluded that it would be appropriate to proceed with the introduction of a new Schedule VIE in March 2011. The new Schedule VIE will be consistent with the new Schedule RC–V proposed to be adopted in March 2011 by the other Federal banking agencies.

**Request for Comment**

Public comment is requested on all aspects of this notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the OTS's functions, including whether the information has practical utility;

(b) The accuracy of the OTS's estimates of the burden of the information collections as they are proposed to be revised, 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 collections 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.

All comments will become a matter of public record.

Dated: January 28, 2011.

**Ira L. Mills,**

*Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2011–2348 Filed 2–2–11; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on Monday, February 14, 2011, at the Saint Regis Hotel, 923 16th Street, NW., Washington, DC from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation and Pension Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Robert.Watkins2@va.gov*. Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461–9214.

Dated: January 28, 2011.

By Direction of the Secretary.

**William F. Russo,**

*Director of Regulations Management, Office of the General Counsel.*

[FR Doc. 2011–2337 Filed 2–2–11; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Health Services Research and Development Service Merit Review Board will be held March 2–3, 2011, at the Hilton San Francisco Financial District, 750 Kearny Street, San Francisco, California. Various subcommittees of the Board will meet. Each subcommittee meeting of the Merit Review Board will be open to the public the first day for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

On March 2, the subcommittee on Nursing Research Initiatives will convene from 8 a.m. to 2 p.m.; the subcommittee for pilot proposal review (HSR 7–Pilot Proposals) will convene from 8 a.m. to 3 p.m.; and Career Development will convene from 12 p.m. to 5 p.m. On March 3, Career Development will reconvene from 8 a.m. to 5 p.m. and six subcommittees on Health Services Research (HSR 1–Medical Care and Clinical Management; HSR 2–Determinants of Patient Response to Care; HSR 3–Informatics and Research Methods Development; HSR 4–Mental and Behavioral Health; HSR 5–Health Care System Organization and Delivery; and HSR 6–Post-acute and Long-term Care) will convene from 8 a.m. to 5 p.m.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of each meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact Kristy Benton-Grover, Scientific Merit Review Program Manager, at Department of Veterans Affairs, Health Services Research and Development (124R), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Kristy.benton-grover@va.gov,* at least five days before the meeting. For further information, please call Mrs. Benton-Grover at (202) 443–5728.

By Direction of the Secretary.

Dated: January 31, 2011.

**William F. Russo,**

*Director of Regulations Management, Office of the General Counsel.*

[FR Doc. 2011–2390 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet March 29–31, 2011, in room 230 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. until 4 p.m., each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda includes updates on recommendations from the 2010 report; overviews of the Veterans Health Administration, the Veterans Benefits Administration, the National Cemetery Administration, and the Women Veterans Health Strategic Health Care Group; and briefings on mental health, women Veterans' legislative issues, women Veterans' research, rural health, and homeless initiatives for women Veterans.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting, or within 10 days after the meeting, to Ms. Shannon L. Middleton at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420 or by fax at (202) 273–7092, or e-mail at *00W@mail.va.gov.* Any member of the public wishing to attend the meeting should contact Ms. Middleton at (202) 461–6193.

Dated: January 31, 2011.

By Direction of the Secretary.

**William F. Russo,**

*Director of Regulations Management, Office of the General Counsel.*

[FR Doc. 2011–2391 Filed 2–2–11; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 76 Thursday,
No. 23 February 3, 2011

Part II

## Nuclear Regulatory Commission

10 CFR Part 73
Enhanced Weapons, Firearms Background Checks, and Security Event Notifications; Proposed Rule

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 73**

**[NRC–2011–0018]**

**RIN 3150–AI49**

## Enhanced Weapons, Firearms Background Checks, and Security Event Notifications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or the Commission) is proposing regulations that would implement its authority under the new section 161A of the Atomic Energy Act of 1954 (AEA), as amended, and revise existing regulations governing security event notifications. These proposed regulations are consistent with the provisions of the Firearms Guidelines the NRC published under section 161A with the approval of the U.S. Attorney General on September 11, 2009 (74 FR 46800).

The NRC previously proposed new regulations on October 26, 2006 (71 FR 62663), that would have implemented this new authority as part of a larger proposed rule entitled "Power Reactor Security Requirements." However, based upon changes to the final Firearms Guidelines the NRC is now proposing further revisions in these implementing regulations that address the voluntary application for enhanced weapons and the mandatory firearms background checks under section 161A. These implementing regulations would only apply to nuclear power reactor facilities and Category I strategic special nuclear material (SSNM) facilities.

In addition, the NRC is also proposing revisions addressing security event notifications from different classes of facilities and the transportation of radioactive material consistently and would add new event notification requirements on the theft or loss of enhanced weapons.

**DATES:** Submit comments on this proposed rule by May 4, 2011. Submit comments specific to the information collection burden aspects of this proposed rule by March 7, 2011. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

**ADDRESSES:** Please include Docket ID NRC–2011–0018 in the subject line of your comments. *See* Section I of this document for instructions on how to submit comments.

*Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0018. Address questions about NRC dockets to Carol Gallagher 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

*E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone 301–415–1677).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

*See* Section IX of this document, Availability of Documents, for instructions on how to access NRC's Agencywide Documents Access and Management System (ADAMS) and other methods for obtaining publicly availability documents related to this action.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–3874; *e-mail: Robert.Beall@nrc.gov* or Mr. Philip Brochman, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–6557; *e-mail: Phil.Brochman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

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### I. Submitting Comments

Comments on rulemakings submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

### II. Background

#### *A. Implementation of Section 161A of the AEA*

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Public Law 109–58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with new authority that will enhance security at designated facilities of NRC licensees and certificate holders. Section 161A also provides the NRC with new authority that will enhance security with respect to the possession or use of certain radioactive material or other property owned or possessed by an NRC licensee or certificate holder, or the transportation of such material or other property that has been determined by the Commission to be of significance to the common defense and security or public health and safety.

Section 161A also mandates that all security personnel with duties requiring access to covered weapons [1] who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder, be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal National Instant Background Check

[1] Covered weapons, standard weapons, and enhanced weapons are new terms the NRC is defining in § 73.2 of this proposed rule. Enhanced weapons are weapons registered under the *National Firearms Act* (*e.g.,* machine guns, short-barreled shotguns, and short-barreled rifles). Standard weapons are all other weapons. Covered weapons are enhanced plus standard weapons.

System (NICS). These firearms background checks will provide assurance that these security personnel are not barred under Federal or applicable State law from receiving, possessing, transporting, or using any weapons.

Section 161A also provides two potential advantages to NRC licensees and certificate holders to enhance security. The first advantage is that certain licensees and certificate holders, after approval by the NRC, will be permitted to obtain and employ in their protective strategies weapons that they were not previously permitted to own or possess under Commission authority and applicable U.S. laws. These include short-barreled shotguns, short-barreled rifles, and machine guns (hereinafter referred to as "enhanced weapons authority"). The second advantage is that security personnel of certain licensees or certificate holders will be permitted to transfer, receive, possess, transport, import, and use handguns, rifles, shotguns, short-barreled shotguns, short-barreled rifles, machine guns, semiautomatic assault weapons, ammunition for these weapons, and large capacity ammunition feeding devices, notwithstanding State, local, and certain Federal firearms laws, including regulations, that otherwise prohibited these actions (hereinafter referred to as "preemption authority"). Before the enactment of section 161A, with limited exceptions, only Federal, State, or local law enforcement authorities could lawfully possess machine guns. Exercise of section 161A authority, however, will allow certain licensees and certificate holders, after obtaining the necessary authorization from the NRC, to lawfully possess enhanced weapons that they previously were not authorized to possess. Licensee and certificate holder applications for enhanced weapons authority and preemption authority are both voluntary.

Subsequent to the enactment of the EPAct, NRC staff and U.S. Department of Justice (DOJ) staff, including the Federal Bureau of Investigation (FBI) and the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), began development of the Firearms Guidelines required under section 161Ad of the AEA. As required by section 161Ad, the provisions of section 161A took effect when the Commission, with the approval of the U.S. Attorney General, published the approved Firearms Guidelines in the **Federal Register** on September 11, 2009 (74 FR 46800). The issued Firearms Guidelines may also be found in the Federal e-Rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2011–0018.

*B. October 2006 Proposed Rule—Implementation of Section 161A of the AEA*

In parallel with the development of the Firearms Guidelines, the NRC developed proposed implementing regulations. On October 26, 2006 (71 FR 62663), the NRC published proposed regulations to implement the provisions of section 161A as part of a larger proposed amendment to its regulations under Title 10 of the Code of Federal Regulations (CFR) parts 50, 72, and 73, "Power Reactor Security Requirements." These proposed implementing regulations were based upon the draft version of the Firearms Guidelines that existed in September 2006. The NRC had proposed that the provisions of section 161A would apply only to power reactor facilities and Category I Strategic Special Nuclear Material (SSNM) facilities (*i.e.,* facilities possessing or using formula quantities or greater of strategic special nuclear material). This would permit these two highest risk classes of licensed facilities to apply to the NRC for section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority).

The NRC had also indicated that it would consider making section 161A authority available to additional classes of facilities, radioactive material, or other property, but this would be accomplished in a separate future rulemaking.

The NRC had recognized that the language of the issued Firearms Guidelines might differ significantly from the September 2006 version of the draft Firearms Guidelines (which was used to develop the October 2006 proposed rule), and therefore changes to the proposed rule might be required to ensure that the final rule text was consistent with the final version of the Firearms Guidelines. The NRC had noted this possibility in the October 2006 proposed rule (*see* 71 FR 62666) and had indicated that appropriate rulemaking actions might be necessary to reconcile the issued Firearms Guidelines and the proposed rule. Subsequent to the publication of the October 2006 proposed rule, the DOJ required several significant changes to the Firearms Guidelines. Consequently, the NRC is taking appropriate action in this proposed rule by proposing further revisions to the agency's regulations that would implement the Firearms Guidelines.

*C. October 2006 Proposed Rule—Security Event Notifications*

The NRC had also proposed several changes to the security event notification requirements in part 73 in the October 2006 proposed rule to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems. These proposed changes would have made generically applicable provisions similar to those that had been contained in security advisories and other guidance issued by the NRC following the events of September 11, 2001.

For example, these advisories had requested that power reactor licensees voluntarily report suspicious activities that could be indicative of surveillance or reconnaissance efforts. The October 2006 proposed rule changes were principally focused on power reactor facilities. Thus, they did not address identical types of events at Category I SSNM facilities, at other waste and special nuclear material (SNM) facilities, or during the transportation of spent nuclear fuel (SNF), high-level radioactive waste (HLW), or SSNM. Additionally, for licensees who obtained enhanced weapons, a new notification provision was also proposed when the licensee made a separate notification to ATF (*e.g.,* regarding a stolen or lost enhanced weapon). However, as discussed previously, the final Firearms Guidelines contained new provisions regarding notifications to the NRC and local law enforcement officials involving stolen or lost enhanced weapons.

Based upon the changes now reflected in the final Firearms Guidelines, comments received on the October 2006 proposed rule, and a reassessment by NRC staff on security event notification needs for equivalent facilities and activities, the NRC is proposing further revisions to the security event notification requirements in part 73. In several cases, the NRC has retained the proposed new or modified notification requirements from the October 2006 proposed rule, but has expanded their applicability to include additional classes of facilities and activities (*e.g.,* Category I SSNM facilities and the transportation of SNF, HLW, and Category I SSNM). The NRC is proposing to make changes to the security event notification requirements that would affect a number of classes of NRC-regulated facilities and activities. This would include fuel cycle facilities

authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, independent spent fuel storage installations (ISFSIs), monitored retrievable storage installations (MRSs), geologic repository operations areas (GROAs), power reactor facilities, production reactor facilities, and research and test reactor facilities. This would also include notifications involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. The NRC is also proposing clarifying and editorial changes to these regulations to improve regulatory clarity and licensee implementation of these requirements. The security event notification requirements have not been updated for several years, and the NRC is taking this opportunity to address additional significant classes of facilities and activities beyond power reactors, as well as incorporating changes required by the final Firearms Guidelines.

**III. Discussion**

*A. Implementation of Section 161A of the AEA*

Section 161A allows the NRC to authorize licensees and certificate holders to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic, large-capacity, assault weapons. As indicated in the October 2006 proposed rule, an NRC licensee or certificate holder interested in obtaining section 161A authority (either enhanced weapons authority and preemption authority or preemption authority alone) will be required to apply to the NRC to take advantage of this new authority. Application for this authority would remain voluntary. However, the firearms background check requirements of section 161A would become mandatory for certain licensees and certificate holders.

The fingerprint-based background check by the U.S. Attorney General and a firearms background check against the FBI's NICS databases (hereinafter the "firearms background checks") would apply to all licensees and certificate holders that fall within the classes of facilities, radioactive material, or other property designated by the Commission under section 161A. The proposed § 73.18(c) would identify the specific classes of licensee facilities, radioactive material, and other property designated by the Commission under section 161A that would be eligible to apply for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. The proposed § 73.19(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under section 161A that would be subject to the firearms background check requirements. In this rulemaking, the NRC would designate two classes of facilities as subject to the requirements of proposed §§ 73.18 and 73.19: power reactor facilities and Category I SSNM facilities. The Commission may consider whether to designate additional classes of facilities, radioactive material, and other property in a separate future rulemaking. Although the October 2006 proposed rule was primarily focused on power reactor security requirements, the NRC expanded the scope of this proposed rule to also include facilities authorized to possess Category I SSNM to efficiently implement the provisions of section 161A for these classes of highest risk facilities. The NRC is continuing to follow this approach in this revised proposed rule to expedite the issuance of these regulations for these highest risk classes of facilities.

Before granting an application to permit security personnel of an NRC licensee or certificate holder to transfer, receive, possess, transport, import, or use a weapon, ammunition, or device not previously authorized, the NRC must determine that the requested action is necessary to enable the security personnel to carry out their official duties associated with protecting: (1) A facility owned or operated by an NRC licensee or certificate holder and designated by the Commission; or (2) radioactive material or other property that has been designated by the Commission to be of significance to the common defense and security or public health and safety and that is owned or possessed by an NRC licensee or certificate holder or that is being transported to or from an NRC-regulated facility. Furthermore, an NRC licensee or certificate holder that applies to the NRC for enhanced weapons authority under section 161A must also comply with applicable ATF firearms requirements before any enhanced weapons are transferred to the licensee or certificate holder.

In the October 2006 proposed rule implementing the Firearms Guidelines, the NRC proposed amendments to part 73 adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and event notification requirements for stolen or lost enhanced weapons. This proposed rule continues those proposed changes and further impacts part 73 in four areas, as summarized below:

First, the NRC is proposing substantive revisions to the following existing regulations in part 73:

- Section 73.2, Definitions.
- Section 73.8, Information collection requirements: OMB approval.
- Section 73.71, Reporting of safeguards events.
- Appendix A to part 73, U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses.
- Appendix G to part 73, Reportable Safeguards Events.

Second, the NRC is proposing adding the following new regulations to part 73:

- Section 73.18, Authorization for use of enhanced weapons and preemption of firearms laws.
- Section 73.19, Firearms background checks for armed security personnel.

Third, the NRC is proposing conforming changes to the following existing regulations in part 73:

- Section 73.46, Fixed site physical protection systems, subsystems, components, and procedures.
- Section 73.55, Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.
- Appendix B to part 73, General Criteria for Security Personnel.

Fourth, the NRC is proposing new NRC Form 754, "Armed Security Personnel Firearms Background Check" to submit the information for the firearms background checks required under § 73.19.

The NRC did not receive any comments on the technical content of this new form in response to the October 2006 proposed rule. However, the ATF revised the similar ATF Form 4473, "Firearms Transaction Record Part I—Over-the-counter" in August 2008. Accordingly, the NRC staff has reviewed the new proposed NRC Form 754 to ensure that the language and provisions in the NRC form are appropriately consistent with the ATF form. Based upon this review and ongoing discussions with the FBI, the NRC staff has identified that several minor changes to NRC Form 754 that are necessary. Accordingly, the NRC would revise proposed NRC Form 754 as follows:

- Revise Question 4 to only require identification of the State or Territory of the security individual's current duty station, rather than the complete address of the duty station.
- Revise Question 4 to permit the entry of multiple States or Territories by security personnel with multiple duty stations.
- Delete Question 13, since it is now redundant with the revised proposed Question 4.

• Add appropriate clarifying, assisting, and explanatory note text that would be consistent with the current ATF Form 4473.

• Revise paragraph 4 in the Privacy Act Information summary to indicate that the submission of NRC Form 754 would be mandatory for certain security personnel. Finally, this proposed rule is not proposing changes to any of the other provisions of parts 50, 72, or 73 that were contained in the October 2006 proposed rule.

*B. Differences Between the Firearms Guidelines and the October 2006 Proposed Rule*

The NRC has identified 14 substantive technical differences between the issued Firearms Guidelines and the proposed implementing text in the October 2006 proposed rule. Additionally, the NRC has identified two editorial/administrative issues that will improve the clarity of these implementing regulations. The NRC is not proposing any additional regulations to resolve technical difference number 7 but would reserve these actions for a future rulemaking, as necessary. A summary of these technical differences and the NRC's proposed solution for each issue follows.

1. A new requirement was added to Sections 1, 2, and 5 of the Firearms Guidelines that would require firearms background checks for all security personnel of licensees and certificate holders who fall within the Commission-designated classes of facilities, radioactive material, and other property and who employ covered weapons as part of their protective strategy. The October 2006 proposed rule would only have required firearms background checks for the security personnel of licenses or certificate holders who voluntarily applied for enhanced weapons authority or preemption authority.

*Solution:* The NRC is proposing a requirement in § 73.19 on existing licensees and certificate holders that fall within Commission-designated classes of facilities, radioactive material, and other property, and who employ covered weapons as part of their protective strategy, that imposes firearms background checks for security personnel who have, or are proposed to have, duties that require access to covered weapons. The NRC would designate two classes of facilities in this proposed rule—power reactor facilities and Category I SSNM facilities.

2. In Section 5 of the Firearms Guidelines, new requirements were added to indicate that licensees and certificate holders in such designated classes who use covered weapons as part of their protective strategy shall begin firearms background checks for their security personnel within 30 days after the NRC issues a final rule designating these classes of facilities, radioactive material, and other property. Additionally, these licensees and certificate holders would be required to remove security personnel who have not received a satisfactory firearms background check from duties requiring access to covered weapons within 180 days of an effective final rule making these designations. These provisions were not addressed in the October 2006 proposed rule.

*Solution:* The NRC is proposing a requirement in § 73.19 on existing licensees and certificate holders who fall within designated classes of facilities, radioactive material, and other property and employ covered weapons as part of their protective strategy to subject all of their security personnel, whose duties currently require, or will require, access to covered weapons, to a firearms background check. Affected licensees and certificate holders would have to begin these firearms background checks within 30 days after the effective date of a final rule (*i.e.,* within 60 days after publication of a final rule in the **Federal Register**). Affected licensees and certificate holders would have to remove from duties requiring access to covered weapons any security personnel who have not completed a satisfactory firearms background check within 180 days after the effective date of a final rule (*i.e.,* within 210 days after publication of a final rule). The rule would permit individuals who have been removed from duties requiring access to covered weapons and who subsequently receive a satisfactory firearms background check to be returned to duties requiring access to covered weapons.

Additionally, the NRC would require applicants for licenses and certificates of compliance (CoC) who fall within designated classes of facilities, radioactive material, or other property to do the following: (1) Begin firearms background checks for security personnel whose duties will require access to covered weapons after the NRC has issued their respective license or CoC; and (2) complete a satisfactory firearms background check before these individuals have access to covered weapons. Future licensees and certificate holders may only begin firearms background checks after the NRC issues their license or CoC, because section 161A of the AEA does not apply to "applicants" for a license or CoC. The NRC would require completion of satisfactory firearms background checks before the licensee's or certificate holder's initial receipt of source material, special nuclear material, or radioactive material (*i.e.,* the point of implementation of the licensee's or certificate holder's security program).

3. In Section 5 of the Firearms Guidelines, new requirements were added to indicate that licensees and certificate holders in designated classes who use covered weapons as part of their protective strategy must remove from duties requiring access to covered weapons any security personnel who receive a "denied" NICS check response. During the 180-day implementation period, individuals who receive a "delayed" NICS check response may continue their access to standard weapons. These provisions were not addressed in the October 2006 proposed rule.

*Solution:* The NRC is proposing a requirement in § 73.19 that would require licensees and certificate holders who fall within designated classes of facilities, radioactive material, and other property, and employ covered weapons as part of their protective strategy to remove from duties requiring access to covered weapons any individuals who receive a "denied" NICS check response. During the 180-day implementation period for existing licensees and certificate holders, individuals who receive a "delayed" NICS check response would be permitted to continue duties requiring access to standard weapons pending resolution of their "delayed" NICS check response. However, during the 180-day implementation period for existing licensees and certificate holders, individuals who receive a "delayed" NICS check response would be required to be removed from duties requiring access to enhanced weapons. Individuals whose "delayed" NICS check response is converted into a "denied" NICS check response (during this 180-day period) would be required to be removed from duties requiring access to covered weapons. Individuals who have been removed from duties requiring access to covered weapons and who subsequently complete a satisfactory firearms background check would be permitted to be returned to duties requiring access to covered weapons. As discussed in Issue 2, the 180-day implementation period would not apply to future licensees or certificate holders; rather, these applicants would be required to complete satisfactory firearms background checks on their security personnel before the initial receipt of

any source material, special nuclear material, or radioactive material.

4. In Section 5 of the Firearms Guidelines, a new requirement was added to indicate that satisfactory completion of a firearms background check must be conducted before security personnel are permitted access to enhanced weapons. Therefore, individuals who received a "delayed" NICS check response during the 180-day transition period would not be permitted to continue their access to enhanced weapons during resolution of the "delayed" NICS response. However, as discussed in Issue 3, these individuals would be permitted continued access to standard weapons during this 180-day period. For licensees and certificate holders who already have deployed enhanced weapons under an authority other than section 161A,[2] this requirement could impact their current ability to deploy enhanced weapons to defend their facility. The NRC's flexibility in this area is constrained by the following: (1) The language of the statute (which does not provide for a transition period); (2) DOJ's assertion that completion of a satisfactory firearms background check is a necessary prerequisite for both future and current access to enhanced weapons; and (3) the language of the Firearms Guidelines.

*Solution:* On May 13, 2008, the NRC issued a generic communication, Regulatory Issue Summary RIS–2008–10, "Notice Regarding Forthcoming Federal Firearms Background Checks" (ADAMS Accession No. ML073480158), to all licensees and certificate holders that might be subject to these firearms background check requirements. On December 22, 2008, the NRC issued Supplement 1 to RIS–2008–10 (ADAMS Accession No. ML082340897), to the same groups of licensees and certificate holders. Supplement 1 clarified the new mandatory nature of the forthcoming firearms background checks. In both communications, the NRC discusses the FBI's Voluntary Appeal File (VAF) program wherein individuals can apply to the FBI to check their status under the NICS databases. This program permits security personnel to resolve any "false-positive" adverse records (that can create an incorrect "delayed" or "denied" NICS response), before the firearms background checks required by this proposed regulation are implemented. The FBI issues a unique personal identification number (UPIN) to individuals who complete the VAF program and receive a "proceed" NICS response. This UPIN can be included on the NRC Form 754 submitted for subsequent firearms background checks by security personnel and would greatly reduce the likelihood that the FBI's NICS databases would generate an incorrect "delayed" or "denied" NICS response—requiring removal of the individual from access to enhanced weapons.

NRC staff has discussed this issue with licensees and certificate holders who currently possess enhanced weapons (under an authority other than section 161A) so that these licensees and certificate holders can prepare for implementation of this new statutory requirement. Accordingly, the NRC proposes to include a provision in § 73.19 that would require the removal of individuals from access to enhanced weapons (for licensees and certificate holders that currently possess enhanced weapons under an authority other than section 161A) if the individual receives a "delayed" or "denied" NICS response.

5. In Section 5 of the Firearms Guidelines, a new requirement was added for periodic firearms background checks at least once every five years. This requirement is in conflict with the language in § 73.18(b)(2) of the October 2006 proposed rule. The proposed rule had indicated that no further (or recurring) firearms background checks would be required subsequent to the completion of an initial firearms background check. Additionally, no Office of Management and Budget (OMB) information collection burdens were identified for these recurring firearms background checks.

*Solution:* The NRC is proposing a requirement in § 73.19 for all licensees and certificate holders subject to firearms background checks to periodically complete a satisfactory firearms background check on security personnel whose official duties require access to covered weapons, after completing an initial satisfactory firearms background check. These periodic checks would be completed at least once every three years, following the initial check. Licensees and certificate holders would be able to perform these periodic checks more frequently than every three years, at the licensee's or certificate holder's discretion. The NRC would use a 3-year period for recurring firearms background checks to be consistent with the NRC's access authorization program background check requirements for power reactors under the recently revised § 73.56(i)(1)(v)(B). Under that regulation, security personnel fall within a group of personnel that are subject to a criminal history records check every three years (rather than once every five years) to maintain their unescorted access to the reactor facility. Synchronizing the firearms background check with criminal history records checks for unescorted access could reduce licensee and certificate holder administrative costs. *See also* the "Specific Questions for the Public and Stakeholder Input" discussion on using a 3-year or 5-year periodicity for these recurring firearms background checks (Section III.I of this document).

6. In Section 5 of the Firearms Guidelines, a new restriction was added on the untimely submission to the FBI by an individual of his (her) rebuttal information to appeal an adverse firearms background check. An untimely submission would lead to the barring of the individual or abandonment of the individual's appeal of an adverse firearms background check. Additionally, the Firearms Guidelines require a licensee or certificate holder to resubmit a new NRC Form 754 for any further consideration following an untimely submission. This provision is in conflict with § 73.18(p) of the October 2006 proposed rule.

*Solution:* The NRC is proposing requirements that clearly present the consequences of an untimely submission of information concerning an individual's appeal of an adverse firearms background check. The rule also would provide for the ability of a licensee or certificate holder to resubmit an individual for a background check, thereby addressing the unintended, permanent debarment of an individual.

7. In Section 6 of the Firearms Guidelines, a provision was added permitting the Commission to specify additional permissible reasons to remove enhanced weapons from a facility authorized to possess these weapons (*i.e.,* movement of the weapons outside of the site for reasons other than for training on these weapons or to use the weapons in escorting shipments of radioactive material or other property). This provision was not addressed in the October 2006 proposed rule.

*Solution:* The NRC is not recommending adding any additional authorized purposes for removing enhanced weapons from a facility possessing enhanced weapons at the present time. However, this additional flexibility is available to the Commission if it is necessary in the future.

8. In Section 6 of the Firearms Guidelines, a new requirement was added to conduct periodic

[2] A small number of NRC licensees have previously obtained enhanced weapons since they are also Federal agencies or they are under contract to Federal agencies.

accountability (*i.e.,* inventory) requirements for enhanced weapons possessed by a licensee or certificate holder. These inventories must be completed by the licensee or certificate holder at least annually. These provisions were not addressed in the October 2006 proposed rule.

*Solution:* The NRC is proposing requirements for licensees and certificate holders to conduct two types of periodic inventories for any enhanced weapons possessed by the licensee or certificate holder. The first type of inventory would be conducted monthly and would verify the number of enhanced weapons present at the licensee's or certificate holder's facilities (*i.e.,* a "piece-count" inventory). The licensee or certificate holder may use electronic technology (*e.g.,* bar codes on weapons) to conduct this inventory. The monthly inventories would not include weapons that are stored in locked containers which are sealed with a high-integrity, tamper-indicating device (TID) (*e.g.,* "ready-service" in-plant storage containers). The second type of inventory would be conducted every six months and would verify the serial number of all enhanced weapons possessed by the licensee or certificate holder. The six-month inventory would include a verification of any weapons that are stored in a locked and TID-sealed storage container. Both types of inventories would be conducted by teams of two individuals who have completed a satisfactory firearms background check to prevent a single individual from manipulating the inventory results and thus obscuring the potential theft or loss of such weapons. The NRC is proposing that these inventories be conducted more frequently than the minimum requirement of the Firearms Guidelines to ensure that stolen or lost weapons do not create an unacceptable security risk for the facility or hazard for local law enforcement in the communities surrounding the licensee's or certificate holder's facility.

9. In Section 6 of the Firearms Guidelines, a new requirement was added to specify that a licensee or certificate holder possessing enhanced weapons must notify the NRC and local law enforcement authorities of the theft or loss of any enhanced weapon (*i.e.,* weapons registered under the National Firearms Act (NFA) (*see* 26 U.S.C. 5841)). This requirement was added due to DOJ's view that NRC licensees and certificate holders possessing enhanced weapons under section 161A are not required to obtain a Federal firearms license (FFL) under ATF's regulations. Federal firearms licensees are required to notify local law enforcement officials of stolen or lost weapons. Independent of the NRC's proposed requirements, licensees and certificate holders who possess enhanced weapons are required under ATF's regulations in 27 CFR 479.141 to immediately notify ATF of any stolen or lost weapons that are registered under the NFA.

*Solution:* The NRC is proposing a requirement that licensees and certificate holders must notify local law enforcement authorities within 48 hours of notifying ATF of the theft or loss of an enhanced weapon. The NRC is also proposing that licensees or certificate holders must notify the NRC as follows; (1) Within four hours of notifying ATF, (for an enhanced weapon that is discovered to be stolen or lost outside the licensee's or certificate holder's protected area); and (2) within one hour of discovery (for an enhanced weapon that is discovered to be stolen or lost inside the licensee's or certificate holder's protected area). The shorter notification time to the NRC would be required when a theft or loss of an enhanced weapon occurs inside the facility's protected area, vital area, material access area, or controlled access area, because those weapons could potentially affect the security of the facility. The NRC views enhanced weapons stolen or lost outside of a facility as primarily a law-enforcement issue, rather than a facility security issue.

The NRC proposes to consolidate these new event notification requirements for licensees and certificate holders into § 73.71(g). Additionally, in the October 2006 proposed rule the NRC added a new provision under Appendix G to part 73, paragraph III(a)(3) regarding security notifications to be made to the NRC subsequent to a licensee's or certificate holder's notifications made to other State or Federal agencies for law-enforcement or regulatory purposes. The provision for notification of the NRC following notifications to Federal law enforcement agencies would now be located in part 73, Appendix G, paragraph II(d)(1).

10. In Section 6 of the Firearms Guidelines, a new requirement was added on the transport of enhanced weapons. Specifically, when these weapons are not being used to escort shipments of radioactive material or other property, they must be unloaded and locked in a secure container during their transport. Weapons and ammunition may be transported in the same container. This provision was not addressed in the October 2006 proposed rule.

*Solution:* The NRC is proposing to add requirements that enhanced weapons being transported to or from the licensee's or certificate holder's facility must be unloaded and locked in a secure container. The rule would permit weapons and their ammunition to be transported in the same secure container. This requirement would not apply to enhanced weapons being used in the course of escorting shipments of radioactive material or other property. Under those circumstances, the enhanced weapons would be required to be maintained in a State of loaded readiness and to be immediately accessible to security personnel (*i.e.,* ready for immediate use in defending the shipment), except when prohibited by 18 U.S.C. 922(q).

11. In Section 6 of the Firearms Guidelines, a new requirement was added requiring licensees and certificate holders possessing enhanced weapons to keep records on the receipt, transfer, and transportation of these enhanced weapons. This provision was not addressed in the October 2006 proposed rule, based on the presumption that licensees and certificate holders would be required to comply with the recordkeeping requirements for the holder of an ATF FFL. However, as discussed in Issue 9 of this section, DOJ does not view an ATF FFL to be required for those possessing weapons under section 161A.

*Solution:* The NRC is proposing to add requirements that records be kept on the receipt and transfer of enhanced weapons that would include the following information: Date of receipt or date of shipment of the weapon; the name and address of the transferor or the name and address of the transferee; name of the manufacturer or importer; and the model, serial number, type, and caliber or gauge of the weapon. Records requirements also would be added regarding the transportation of enhanced weapons (away from the licensee's or certificate holder's facility), including: Date of departure and date of return; the purpose of the enhanced weapon's transportation; the name of the person transporting the enhanced weapon and the name of the person/facility to whom the enhanced weapon is being transported; and the model, serial number, type, and caliber or gauge of the enhanced weapon.

12. In Section 7 of the Firearms Guidelines, a new requirement was added providing for the termination, modification, suspension, or revocation of a licensee's or certificate holder's authority under section 161A of the AEA. A requirement for the NRC to notify ATF of these types of actions was

also added. Furthermore, a process for re-application for section 161A authority was also added. These provisions were not addressed in the October 2006 proposed rule.

*Solution:* The NRC is proposing a requirement that the NRC provide timely notification to ATF regarding the termination, modification, suspension, or revocation of a licensee's or certificate holder's section 161A authority. A process would be specified for terminating, modifying, suspending, or revoking a licensee's or certificate holder's section 161A authority as well as their re-application for such authority following a termination, suspension, or revocation.

13. In Section 8 of the Firearms Guidelines, new definitions were added. These definitions are not consistent with the October 2006 proposed rule's new definition in § 73.2 for the term: *Enhanced weapons.* Additionally, new definitions were not included in § 73.2 for the terms: *Firearms background check, NICS check, NICS response,* and *Satisfactory firearms background check.*

*Solution:* The NRC is proposing to revise the definitions in § 73.2 to match the definitions contained in the issued Firearms Guidelines.

14. In Section 8 of the Firearms Guidelines, cross references were added to ATF and FBI current regulations for certain weapons terms and NICS terms, rather than replicating these terms directly in the Firearms Guidelines. These provisions were not addressed in the October 2006 proposed rule.

*Solution:* The NRC is proposing to add cross references in § 73.2 that would point to the relevant definitions under ATF and FBI regulations, rather than fully replicating these ATF and FBI terms in § 73.2.

In addition to these 14 technical issues, the NRC would address 2 administrative issues raised in the October 2006 proposed rule as follows:

15. As originally developed by the NRC staff, the order of presentation of the new regulations implementing the Firearms Guidelines first presented the requirements on firearms background checks and then identified the classes of licensee or certificate holders to whom these provisions and the provisions for obtaining enhanced weapons and preemption authority or preemption authority alone would apply. Based on input from stakeholders and discussions within the NRC staff, the NRC recognizes that this order of presentation is not logical and does not support agency regulatory clarity objectives.

*Solution:* The NRC is proposing to switch the order of presentation in these regulations implementing the Firearms Guidelines. Accordingly, the NRC would switch the contents of the two sections implementing this new authority. First, revised § 73.18 would identify the classes of facilities designated by the Commission under section 161A authority that are appropriate for the voluntary stand-alone preemption authority or combined enhanced weapons authority and preemption authority and present the requirements for licensees and certificate holders obtaining enhanced weapons or preemption authority. Second, revised § 73.19 would identify the classes of facilities designated by the Commission under section 161A authority that are appropriate for the mandatory firearms background checks and present the requirements for these firearms background checks.

16. In the information collection requirements of § 73.8 of the October 2006 proposed rule, a place holder was added for the OMB control number (for Paperwork Reduction Act purposes) regarding the FBI's current fingerprint Form (FBI Form FD–258). OMB has subsequently issued a new control number (0110–0046) to the FBI for FBI Form FD–258.

*Solution:* The NRC is proposing to add the approved OMB control number for FBI Form FD–258 to § 73.8 and to reference § 73.19 as one of the sections in part 73 where this burden is required (*see also* issue 15 of this section).

The NRC is also proposing to specify the proposed OMB control number (*i.e.,* 3150–0204) for NRC Form 754 in § 73.8.

*C. Application of Section 161A Authority to Additional Classes of NRC-Regulated Facilities and Radioactive Material*

In the October 2006 proposed rule, the NRC had proposed designating only two classes of NRC-regulated facilities as appropriate for the authority of section 161A of the AEA at that time—power reactor facilities and Category I SSNM facilities. The NRC had taken this approach to focus on the highest risk facilities and had indicated that additional classes of facilities and radioactive material would be considered in future rulemakings. The NRC intends to continue this approach; and therefore the scope implementing section 161A authority in this rulemaking will be limited to these two classes of facilities. However, the NRC may also propose designating additional classes of facilities and radioactive material in a separate future rulemaking.

*D. Transfer of Enhanced Weapons*

During development of the Firearms Guidelines, NRC, DOJ, and ATF staffs discussed the circumstances under which a licensee's or certificate holder's issuance of an enhanced weapon to a security individual would not be considered a "transfer" of an enhanced weapon under ATF's current regulations (*e.g.,* the issuance of an enhanced weapon to an authorized security individual for their duty shift, for escort of a shipment of radioactive material, or for training purposes). Defining a transaction involving a weapon as a "transfer" under ATF's regulations incurs a number of additional obligations, and the NRC was concerned that an unnecessarily broad classification of "transfers" would result in serious impacts on routine, day-to-day security activities involving enhanced weapons.

For example, by definition, ATF regulations require that any "transfer" of enhanced weapons (*i.e.,* weapons registered with ATF under the NFA (26 U.S.C. chapter 53) (*see* 26 U.S.C. 5841, "Registration of Firearms")), be reviewed and approved by ATF staff in advance of any such transfers (*see* 26 U.S.C. 5812). The NRC has been informed that the ATF's typical review process to transfer a weapon registered under the NFA can take a month or more in normal circumstances. If daily issuances of enhanced weapons to security personnel at nuclear power plants were considered "transfers" under ATF's regulations, these activities would then require prior ATF approval. Further, each weapons transfer under the NFA would also trigger tax implications under ATF regulations. This issue was not addressed in the October 2006 proposed rule.

Following discussions between the NRC, DOJ, and ATF staffs regarding NRC's concerns with the transfer issue, the ATF provided a legal opinion to the NRC's Office of the General Counsel on potential circumstances that would or would not constitute the transfer of an enhanced weapon and thus require prior ATF approval (*see* letter from ATF listed in Section IX, "Availability of Documents," of this document). As described in the opinion, ATF concluded that ATF's transfer requirements under 27 CFR part 479, "Machine Guns, Destructive Devices, and Certain Other Firearms," would not apply in certain circumstances. Based on this guidance from ATF, the NRC is proposing language in § 73.18(m) that would clarify when the issuance of an enhanced weapon to security personnel of licensee's and certificate holder's

authorized to possess such weapons is, or is not, considered a weapons transfer under the NFA.

ATF's letter indicates that the issuance of enhanced weapons by a licensee or certificate holder to security personnel for the performance of their official duties does not constitute a transfer in three instances:

- When the enhanced weapons are issued to security personnel who are employees of the licensee or certificate holder or who are employees of a security contractor providing security services to the licensee or certificate holder and their official duties are "at the site" of an NRC-approved facility;
- When the enhanced weapons are issued to security personnel who are employees of the licensee or certificate holder and their official duties are "beyond the site" of an NRC-approved facility; or
- When the enhanced weapons are issued to security personnel who are employees of a security contractor providing security services to the licensee or certificate holder and their official duties are "beyond the site" of an NRC-approved facility, if authorized licensee employees are present to oversee the activities.

The NRC is proposing that the limit of "at the site" would include all areas of an authorized facility located within the "site boundary," where the "site boundary" is defined in the facility's safety analysis report. Absent the presence of licensee personnel overseeing the contractor security personnel possessing enhanced weapons, when enhanced weapons are taken beyond the site boundary, ATF has indicated that unless licensee personnel are present to maintain "constructive possession" of the enhanced weapons, such actions are considered a transfer of an enhanced weapon. Without prior ATF approval of a transfer, such an action would be a violation of 26 U.S.C. 5812 and 5841. Licensee personnel overseeing the use of enhanced weapons beyond the site boundary would need to have completed a satisfactory firearms background check and would need to be trained on the accountability and notification requirements for enhanced weapons. However, such personnel would not have to be fully trained and qualified to use the enhanced weapons.

As discussed in Technical Difference 7 (Section III, "Discussion," of this document), the licensee's or certificate holder's issuance of an enhanced weapon to security personnel for their official duties beyond the site boundary would only be authorized for: (1) Training at facilities designated in the licensee's or certificate holder's training and qualification plan; and (2) escorting shipments of Commission-designated radioactive material and other property. ATF's transfer requirements would apply in all other circumstances where enhanced weapons are taken beyond the site boundary by employee or contractor personnel (*e.g.,* the sale or relocation of an enhanced weapon to another NRC licensee or certificate holder, the repair of an enhanced weapon at an offsite armorer or the manufacturer, or the use of an enhanced weapon at a shooting competition that is located away from the licensee's or certificate holder's training facility specified in the NRC-approved training and qualification plan).

*E. NRC Form 754*

One comment on the information collection burden was received from the October 2006 proposed rule that bears on § 73.19 and the proposed NRC Form 754. The NRC has addressed this issue in comment F.2 (*see* Section IV, "Resolution of Public Comments on the October 2006 Proposed Rule," of this document). The NRC would make minor changes to the assisting and explanatory notes text of proposed NRC Form 754 to make the NRC's form consistent with similar ATF Form 4473 that was revised in August 2008. Separately, the NRC would revise Question 4 on Form 754 to require only the identification of the State or Territory where the security individual's duty station exists, rather than the complete address of the duty station, as this is unnecessary. Additionally, the NRC would require the security personnel to enter multiple States or Territories for instances where the security personnel routinely serves at multiple duty stations that are located in different States or Territories. The NRC would also delete Question 13 (State of Residence) on proposed NRC Form 754 since this information is redundant to the information provided under the proposed Question 3 (Current Residence Address). Furthermore, the NRC would revise paragraph 4 in the Privacy Act Information summary (page 3 of the form) to indicate that the submission of NRC Form 754 would be mandatory for certain security personnel.

The FBI staff has indicated to the NRC that a firearms background check is only valid for the States or Territories identified on the NRC Form 754. Consequently, the duty station's State or Territory information is necessary for the FBI to conduct the firearms background check against a specific State's or Territory's firearms restrictions. Therefore, if security personnel are moved to a different duty station in a different State or Territory or if the security individual conducts firearms training at a facility in a different State or Territory, then the individual's firearms background check must be recompleted against all applicable States and Territories to ensure the individual is not disqualified under a particular State's or Territory's laws. This would also permit licensees to move security personnel to a different facility to support an outage (for example, to a reactor that is located in a different State but is part of a larger fleet of reactors within a single utility) or to use a central training facility and firing range that is capable of handling large-caliber automatic weapons.

*F. Definitions*

The NRC would add several new definitions to § 73.2 as conforming changes to the new enhanced weapons and firearms background check provisions in §§ 73.18 and 73.19 and to the revised event notification provisions in § 73.71 and Appendix G to part 73. As a conforming change to the event notification provisions, the NRC would add new definitions to § 73.2 for SNF and HLW. The current definitions for SNF and HLW that are found in the NRC's regulations in parts 63, 72, and in Section 2 of the Nuclear Waste Policy Act of 1982, as amended (NWPA), have slight differences. Accordingly, the NRC would add definitions for SNF and HLW to § 73.2 to support the proposed changes to the event notification requirements regarding shipments of SNF and HLW. These definitions would also support changes to transportation security and shipment advance notification requirements in a separate future rulemaking.

*G. Changes to Safeguards Event Notifications*

In the October 2006 proposed rule, the NRC had proposed several changes to the safeguards event notification requirements in part 73. These requirements are located in § 73.71 and in Appendix G to part 73. In this proposed rule, the NRC would retain notification requirements to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems. Additionally, based upon further review of the need for these requirements to accomplish the agency's strategic communication missions, the NRC would expand the applicability of these proposed regulations to include Category I SSNM facilities as well as the

transportation of SNF, HLW, and Category I SSNM. The NRC believes these types of facilities and activities pose a potential for a significant level of risk to the public and therefore require an equivalent level of security event notifications. Based upon the nature of the stakeholder comments received on the proposed 15-minute "imminent attack" notification requirement, the NRC recognizes that the basis for this requirement (*i.e.,* the accomplishment of the NRC's strategic communications missions) requires further clarification.

Accordingly, while the NRC agrees it would not respond to a licensee's 15-minute notification with NRC resources to defeat an imminent or actual threat, the NRC has two strategic communications missions to execute in response to reports of imminent or actual hostile acts that are independent of the affected licensee. First, the NRC has a strategic mission to immediately communicate such hostile act information to the Department of Homeland Security (DHS) operations center under the National Response Framework. DHS has responsibility for rapidly communicating (*i.e.,* retransmitting) this information to other parts of the government (*e.g.,* national leaders and key military, homeland security, and critical infrastructure communication centers). Second, the NRC also has a strategic mission to immediately communicate hostile act information to other appropriate NRC licensees and certificate holders so that they can increase their security posture at their facilities or for their shipments of SNF, HLW, or Category I SSNM. This prompt notification could be vital in increasing licensees' ability to defend against a multiple-site attack and to protect the lives of security and plant personnel at a second facility. This rationale extends to other government or critical infrastructure facilities for defense against multiple-sector attacks. During the terrorist attacks of September 11, 2001, the United States saw that its adversaries can simultaneously attack multiple sectors of our critical national infrastructure (*i.e.,* financial, military, and governmental sectors were attacked).

Consequently, prompt notification to the NRC may permit NRC licensees and certificate holders or other government facilities or components of the critical national infrastructure (who receive timely notification of an attack or threat elsewhere) to shift their security defensive posture, thereby increasing the likelihood that the defensive forces would defeat a terrorist attack. Accordingly, the NRC views the licensee's 15-minute "imminent attack" notifications as providing the NRC the necessary information to permit the NRC to accomplish its strategic communication missions.

The NRC would retain the proposed requirement for a licensee to establish a continuous communications channel with the NRC subsequent the licensee's initial transmission of an abbreviated set of information to the NRC, and thereby reduce the immediate impact on licensee personnel. The NRC proposes that licensees establish a continuous communications channel (if requested by the NRC following the initial 15-minute attack or threat notification) after the licensee has completed any required emergency plan notifications, required notifications or requests for assistance to local law enforcement officials, or 60 minutes have elapsed since event discovery. Licensees are required under the current § 73.71 to establish a continuous communications channel, if requested by the NRC, following both facility and transportation one-hour security event notifications.

For enhanced weapons that are stolen or lost, the NRC would add a notification requirement to § 73.71 to notify the NRC and local law enforcement officials. The NRC is also proposing to add a separate requirement to notify the NRC if a licensee possessing enhanced weapons receives an adverse inspection finding from ATF (regarding the enhanced weapons). The NRC is proposing this second notification requirement to enable the NRC to respond to any press or public inquires following ATF action.

The NRC is proposing to make changes to the security event notification requirements that would affect a number of classes of NRC-regulated facilities and activities. This would include fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. This would also include notifications involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM.

The NRC also is proposing to make several editorial and organizational changes to § 73.71 and Appendix G to part 73 to provide a prioritized, graded, and parallel structure that applies to both licensees and certificate holders. The new structure would accomplish the following: (1) Provide increased regulatory clarity; and (2) avoid confusion regarding the applicability of individual provisions of § 73.71 and Appendix G to part 73 to certificate holders, given the current language in §§ 76.113, 76.115, and 76.117. The NRC would also group notifications under common time limits, as is currently done in § 50.72. The NRC also would incorporate changes made in response to comments to provide increased differentiation between required event notifications versus the safeguards event log, to facilitate the retraction of non-valid notifications, and to provide additional clarity on tampering events. The NRC would also add clarifying language to § 73.71 and Appendix A to part 73 to address non-reactor facilities that are required to make classified security event notifications.

The NRC views the long-term imposition of "voluntary notifications" for security events as inconsistent with the agency's strategic goals of long-term regulatory stability and fostering transparency and public involvement in developing and imposing regulatory requirements. Accordingly, some event notifications that were originally issued to licensees and certificate holders following the events of September 11, 2001 (via NRC bulletins and advisories) would be incorporated into the regulations in § 73.71 and Appendix G rather than continuing as "voluntary notification." This concept remains unchanged from the NRC's approach taken in the October 2006 proposed rule.

Additionally, the NRC would continue with the proposed removal of the word "credible" from the term "credible threats" reported under proposed Appendix G, Paragraph 1(a). The NRC maintains that only the NRC, the intelligence community, and law enforcement agencies should determine whether a threat is credible. This function should not rest with the licensee or certificate holder. Licensees and certificate holders would not have access to classified threat indicators or intelligence information; therefore, a licensee or certificate holder decision on the credibility of a specific event might be incorrect or incomplete.

Additionally, the NRC is proposing to add security event reporting and recording requirements related to certain cyber security issues at nuclear power reactor facilities. The NRC is proposing the additions because cyber security events reporting and recording requirements were not included in the NRC's recent final rule that added § 73.54 to the NRC's regulations (74 FR 13925; March 27, 2009). Section 73.54 requires power reactor licensees to establish and maintain a cyber security program at their facilities to provide

high assurance that digital computer, communication systems, and networks are adequately protected against cyber attacks, up to and including the design basis threat as described in § 73.1. The proposed additions would be added to the security event notification provisions of § 73.71 and Appendix G to part 73.

*H. Conforming Changes to Category I SSNM Facility, Power Reactor Facility, and Training and Qualification Security Requirements*

The NRC is proposing to make two conforming changes to the security requirements for Category I SSNM facilities and power reactor facilities to increase regulatory clarity. The NRC would add a new paragraph (b)(13) to § 73.46 and a new paragraph (b)(12) to § 73.55 that would provide a cross reference to the firearms background check requirements of § 73.19. Additionally, the NRC would add clarifying implementation language to these two new paragraphs to address the allowable time for future licensees to satisfactorily complete firearms background check requirements on armed security personnel (*i.e.,* licenses issued by the NRC after the implementation date specified in the proposed § 73.19(b)(4)). The NRC is proposing this implementation language because applicants for a license are not authorized under section 161A of the AEA to submit firearms background checks to the NRC until after the NRC issues a license and thus § 73.19(b)(4) would require immediate compliance upon issuance of a license, (as the implementation date will have already passed). Accordingly, the NRC is proposing a 6-month implementation period for any future licensees to satisfactorily complete these firearms background checks. This implementation period is the same as is proposed for current licensees under § 73.19.

The NRC is also proposing to make a conforming change to the requirements of Appendix B to part 73, Section I.A, "Employment Suitability," to update the suitability language on felony convictions restrictions for unarmed security personnel and the 18 U.S.C. 922 restrictions on armed security personnel. This proposed language is the same as the language used in the final rule issued on March 27, 2009 (74 FR 13925), "Power Reactor Security Requirements," under VI.B.1 to Appendix B to part 73—General Criteria for Security Personnel (*see* 74 FR 13988).

*I. Specific Questions for Public and Stakeholder Input*

The NRC is seeking specific input from the public and stakeholders on the proposed solution to Issue 5 discussed previously. Issue 5 involves the requirement for designated licensees and certificate holders to complete a periodic firearms background check on security personnel whose official duties require access to covered weapons. The Firearms Guidelines require that a satisfactory firearms background check be completed for security personnel at least once every five years. The NRC is proposing that these checks be conducted at least once every three years and that licensees and certificate holders can conduct these checks more frequently, if they desire. The NRC is proposing this approach to reduce licensee and certificate holder costs by permitting licensees and certificate holders to submit a single set of fingerprints to accomplish the periodic firearms background checks and periodic criminal history records checks that support access authorization and personnel security clearance processes. For example, fingerprints for security personnel at power reactors are currently submitted to the NRC every three years as part of the licensee's access authorization program, as required by § 73.56(i)(1)(v)(B) for power reactors.

An alternative approach would be to require firearm background checks at least once every five years and let licensees and certificate holders choose how they will coordinate and/or control these checks with other required fingerprint checks (*e.g.,* the access authorization program under § 73.56 for power reactors). The Firearms Guidelines allow the NRC some flexibility in developing the requirements for the background checks. Therefore, the NRC is seeking stakeholder comments on the following three questions:

A. Is it appropriate to require a 3-year periodicity for recurring firearms background checks? (*Note:* Consistent with the periodicity of access authorization program recurring fingerprint checks for armed security personnel.)

B. Or, is it appropriate to require a 5-year periodicity for recurring firearms background checks, keeping in mind that the Firearms Guidelines require no less than 5 years?

C. If not 3 years or 5 years, what is an appropriate periodicity for recurring firearms background checks, keeping in mind that the Firearms Guidelines require no less than 5 years?

The NRC is also seeking public and stakeholder input on questions related to the periodic inventory requirements for enhanced weapons that are set forth in the proposed § 73.18(o). Specifically, these proposed regulations would not require monthly accountability inventories of enhanced weapons that the licensee or certificate holder stores in a locked secure weapons container that is: (1) Physically located within the protected area, vital area, or material storage area of a facility; and (2) is sealed with a high-integrity TID.

In such cases, only the verification of the intact TID on the weapon containers would be required during the monthly inventory. However, for the semi-annual accountability inventories, licensees and certificate holders would be required to physically verify the serial number of each enhanced weapon they possess by removing the TID and verifying the weapon(s) serial number.

D. Are semi-annual accountability inventories an appropriate periodicity for inventories that would physically verify the serial number of each enhanced weapon possessed by a licensee or certificate holder? If not, what is an appropriate periodicity for such inventories?

Finally, the NRC is seeking public and stakeholder input on the question of whether the proposed security event notification regulations (currently consisting of § 73.71 and Appendix G to part 73) should be consolidated into a single section or into a series of three adjacent sections (*e.g.,* separate sections on telephonic notifications, written follow-up reports, and safeguards event logs) that would be similar in concept to the structure of §§ 50.72 and 50.73. The NRC is concerned that continuing to locate security event reporting and recording requirements in separate portions of part 73 may reduce the regulatory clarity and ease of use of these regulations. Therefore, the NRC is seeking stakeholder comments on the following two questions and may implement these actions in a final rule, without further opportunity for comment:

E. Should the requirements for reporting and recording security events be consolidated into a single section of part 73?

F. Should the requirements for reporting and recording security events be located in a series of three adjacent sections of part 73 (*e.g.,* telephonic notifications, written follow-up reports, and safeguards event log)?

**IV. Resolution of Public Comments on the October 2006 Proposed Rule**

On October 26, 2006 (71 FR 62663), the NRC published a proposed rule and requested public comments. Forty-eight comment letters were received on the October 2006 proposed rule, and 16 of these letters included comments on the proposed rule relating to the Firearms Guidelines and event notification provisions. Of these 16 comment letters, one was from a State, three were from the public, and the remaining 12 letters were from NRC licensees and the Nuclear Energy Institute. The comment letters provided various points of view and suggestions for clarifications, additions, and deletions. Copies of these letters are available for public inspection and copying for a fee at the NRC's PDR at 11555 Rockville Pike, Rockville, MD 20852. Copies of these letters may also be viewed and downloaded from the Federal eRulemaking Web site *http://www.regulations.gov,* docket number NRC–2006–0016.

The NRC also requested comments on six specific questions, one of which involved the event notification provisions. No specific questions were asked on the Firearms Guidelines provisions. In the specific question the NRC asked, "For the types of events covered by the proposed four-hour notification requirements in § 73.71 and Appendix G to part 73, should the notification time interval for some or all of these notifications be different (*e.g.,* a 1-hour, 2-hour, 8-hour, 24-hour notification)? If so, which notification time interval is appropriate? "Notification time interval" is meant to be the time from when a licensee recognizes that an event has occurred, or is occurring, to the time that the licensee reports the event to the NRC. No commenters responded to this specific question.

The NRC also requested comments on the information collection burden associated with the October 2006 proposed rule and asked four specific questions. One commenter responded to each of these four questions.

There was a range of stakeholder views concerning the Firearms Guidelines and event notification provisions of the 2006 proposed rulemaking. However, most commenters supported the enhanced weapons and firearms background check provisions and only requested clarifying changes. There were some commenters who requested more rigorous provisions for the use of enhanced weapons, and some who objected strongly to provisions regarding event notification requirements. Some stakeholders viewed the 2006 proposed rulemaking as an effort to "codify" the "insufficient status quo" while others described the new requirements as going well beyond the post-September 11, 2001 security order requirements previously imposed by the Commission.

The Commission believes that commenters who suggested that the Commission had no basis to go beyond the requirements that were imposed by the security orders misunderstood the relationship of those security orders and the October 2006 proposed rulemaking. The security orders were issued based on the specific knowledge and threat environment information available to the Commission at the time the orders were issued. The Commission advised licensees who received those orders that the requirements were interim and that the Commission would eventually undertake a more comprehensive re-evaluation of current safeguards and security programs. The objectives of the October 2006 proposed rule went beyond simply making generically applicable security requirements similar to those that were imposed by Commission orders. The Commission intended to implement requirements informed by its review of site security plans, its experience with the implementation of the enhanced baseline inspection program, and its evaluation of force-on-force exercises. Accordingly, the Commission will apply insight gained from these actions to any new requirements proposed for event notifications in this proposed rulemaking.

Responses to specific comments are presented as follows.

*A. General Issues*

*Comment A.1:* One commenter indicated that concussive type devices (a.k.a., flash bangs) should be covered by this rule as a significant addition to the armed responders' available equipment (*i.e.,* the use of flash bangs would significantly increase security personnel's capabilities).

*Response:* The NRC disagrees. Section 161A of the AEA does not authorize NRC licensees and certificate holders to possess destructive devices as they are defined under section 5845 of the NFA (26 U.S.C. 5845). It is the NRC's understanding, however, that some flash bang devices are not prohibited because they are not considered destructive devices. Therefore, it is possible that some licensees and certificate holders currently may possess flash bang devices that are not classified as destructive devices under the NFA. However, if a flash bang device is classified as a destructive device under the NFA, NRC licensees and certificate holders in general would not be authorized to possess them. Information on whether or not a particular flash bang device is considered a destructive device should be obtained from its ATF-licensed manufacturer or importer.

Under the proposed requirement, if a specific type of flash bang device is not classified as a destructive device, but its possession is restricted under applicable State or local law (applicable to the licensee's or certificate holder's locale), then licensees and certificate holders who apply for and are approved for preemption authority would be able to possess these devices notwithstanding any State or local restrictions.

*Comment A.2:* One commenter asked if stakeholders would have an opportunity to comment on the Firearms Guidelines before they are published in the **Federal Register**.

*Response:* Section 161A.d of the AEA required the NRC to develop the Firearms Guidelines and obtain the approval of the U.S. Attorney General before issuance. To meet this requirement, the NRC, DOJ, FBI, and ATF staff, worked jointly to develop guidelines that were approved by the U.S. Attorney General and which provide direction to these agencies on implementing section 161A of the AEA. An opportunity for public comment on the Firearms Guidelines was not provided before its publication in the **Federal Register** on September 11, 2009.

*Comment A.3:* One commenter asked if the enhanced weapons provisions of the proposed rule were mandatory or voluntary.

*Response:* A licensee and certificate holder application for section 161A authority (either combined enhanced weapons authority and preemption authority or stand-alone preemption authority) is voluntary. However, the firearms background check requirements will be mandatory for affected licensees and certificate holders (those that are within the Commission-designated classes of facilities listed in § 73.19(c)). Licensees and certificate holders who apply for section 161A authority and receive approval from the NRC must comply with the applicable requirements of §§ 73.18, 73.19, and 73.71.

*Comment A.4:* One commenter asked if the rule would permit licensees to use enhanced weapons as a substitute for uniformed guards or other weapons.

*Response:* The NRC recognizes that the increased defensive firepower from enhanced weapons may permit a licensee or certificate holder to adjust its protective strategy and thereby reduce

the size of its protective force. However, to obtain enhanced weapons, the licensee or certificate holder must submit updated security plans and contingency response plans to the NRC for review and approval. Consequently, the NRC will have the opportunity to evaluate and approve the level of defensive firepower and personnel appropriate for a specific site.

*Comment A5:* One commenter asked what, in the NRC's view, would be the incentive for licensees to obtain and use enhanced weapons, given the increased costs to obtain and deploy such weapons?

*Response:* The decision to employ enhanced weapons is essentially a business decision to be made on a site-specific basis by each licensee or certificate holder subject to this regulation. It is not the place of the NRC to advise such regulated entities on business decisions. However, from a purely tactical security viewpoint, the fundamental incentive for a licensee or certificate holder to obtain enhanced weapons is to increase its defensive capability to provide high assurance that the public health and safety and the common defense and security will be adequately protected from attempted radiological sabotage at reactor facilities or from the attempted theft or diversion of Category I SSNM at Category I SSNM facilities. Many of the weapons that would be accessible to licensees and certificate holders under this rule are considered to be "force multipliers." The increased firepower from these weapons would permit a single security individual to deliver more rounds on target in a shorter period of time, thereby increasing the likelihood that an adversary would be neutralized.

Because obtaining enhanced weapons is voluntary, licensees and certificate holders must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general, and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. Likewise, as applications are submitted to the NRC for its review and approval, the NRC will also evaluate the site-by-site suitability of the use of enhanced weapons in making its own determination that the planned use is consistent with public health and safety and the common defense and security.

*B. Definitions (§ 73.2)*

*Comment B.1:* One commenter suggested that the definitions for enhanced weapons should include remotely operated weapon systems (ROWS). The commenter indicated that there is growing (State or local) pressure to regulate enhanced weapons, and these weapons allow increased defensive capabilities without expanding the number of armed responders.

*Response:* The NRC disagrees. The definition of "enhanced weapons" under this rule is consistent with that contained in the Firearms Guidelines. The critical distinction for an enhanced weapon (*e.g.,* a machine gun) is whether multiple rounds are fired with a single pull of the weapon's trigger or a single round is fired with a single pull of the trigger. The issue is not whether the trigger is pulled directly by a human finger or pulled remotely by an electro-mechanical device. Generally speaking, a ROWS is not in itself a "weapon" but rather is a mechanical and electro-optical mechanism into which a normal or enhanced weapon could be incorporated and thus permit the weapon to be fired remotely. In the NRC's view, licensees and certificate holders could currently employ a ROWS using the standard weapons to which they currently have access. However, licensees and certificate holders who apply for enhanced weapons and are approved for preemption authority would in theory be able to incorporate these weapons into a ROWS under the language of section 161A, notwithstanding any applicable State or local restrictions. Therefore, no change is needed to the definition. The NRC notes that a ROWS using machine guns would require NRC approval of this enhanced weapon. Although ROWS could also use short-barreled shotguns or short-barreled rifles, the NRC considers that approach unlikely because of the inherent inaccuracy of these weapons (*i.e.,* these are short-range weapons that are typically designed for concealment purposes).

*C. Authorization for the Use of Enhanced Weapons and Preemption of Firearms Laws (Formerly Proposed § 73.19, Now Revised Proposed § 73.18)*

*Comment C.1:* Several commenters stated that while the proposed rule allows enhanced weapons to be used for defense and requires the licensee to protect against an insider, it does not require the licensee to protect against an insider using enhanced weapons for the purposes of radiological sabotage.

*Response:* The NRC agrees that the proposed rule (§§ 73.18 and 73.19) did not include language requiring a "licensee to protect against an insider using enhanced weapons for the purposes of radiological sabotage." However, subsequent to the close of the comment period on the October 2006 proposed rule, the NRC published a separate final rule revising the design basis threat contained in § 73.1 (*see* 72 FR 12705; dated March 19, 2007), which addresses this issue. Specifically, § 73.1(a) (1) (i) (B) and (C) for radiological sabotage and § 73.1(a) (2) (i) (B) and (C) for theft or diversion of formula quantities of strategic special nuclear material both require licensees to protect against threats that include "knowledgeable inside assistance" that can be active or passive, or both, and also addresses the use of hand-held automatic weapons. Consequently, the NRC concludes that the issue raised by these commenters has been addressed by a separate rulemaking; no further changes are required in this proposed rule.

*Comment C.2:* Several commenters stated that the weapons safety assessment (required as part of licensee's or certificate holder's application for enhanced weapons under the proposed rule) should be expanded in scope to include the assessment of an insider malevolently using these weapons against the facility.

*Response:* The weapons safety assessment is a new concept that the NRC created in developing the Firearms Guidelines to aid the staff in evaluating applications to use enhanced weapons. The NRC's intent was to require licensees and certificate holders to examine how they intended to deploy enhanced weapons and to assess if significant onsite or offsite collateral damage might occur from firing such weapons. If these types of concerns were identified, the licensee could take actions to use different caliber weapons (*e.g.,* use a 5.56 x 45 mm round instead of a 7.62 x 51 mm round; the latter has a greater range and penetrating power) or to take preventive or mitigative efforts. Examples of preventive efforts could include limiting a fixed machine gun's field of fire through the use of elevation and traverse limits or not deploying a fixed machine gun along certain azimuths of a facility. Mitigative efforts could include the use of intervening, bullet-resistant protective barriers.

Thus, it is unclear to the NRC how licensees and certificate holders could gain useable mitigative or preventive information from a weapons safety assessment that included an evaluation of security personnel malevolently using their issued enhanced weapons against either safety-related or sensitive structures, systems, and components (SSCs) or critical personnel. The NRC has reached this conclusion given that a security individual's "inside knowledge" would likely allow them to

circumvent these mitigative or preventive measures (established in response to the assessment) or that installation of uncircumventable measures would likely impose unacceptable operations, maintenance, radiation protection, or design impacts on the SSCs. With respect to non-security personnel obtaining access to enhanced weapons and acting as an active insider, the licensee's and certificate holder's security plans currently require that all weapons be controlled and secured, unless they are in the possession of authorized security personnel.

Consequently, the NRC would rely upon other personnel-monitoring programs required by NRC regulations to significantly reduce the likelihood of security personnel malevolently using their weapons against such SSCs or against critical personnel. These programs would include the fitness-for-duty program, psychological-screening program, behavioral-observation program, and insider-mitigation program. Therefore, the NRC would not expand the scope of the proposed weapons safety assessment as requested by the commenters.

*Comment C.3:* One commenter stated that the NRC did not explicitly recognize the authority of FFL holders (who are licensed by ATF to manufacture, import, or possess machine guns) to transfer enhanced weapons to an NRC-licensee or certificate holder who has received the NRC's approval under this proposed rule and the October 2006 proposed rule to possess specific enhanced weapons and who has also received the ATF's approval under ATF regulations to receive these weapons. The commenter requested the NRC to explicitly clarify in a final rule that the holder of an FFL who has received approval from ATF to transfer specific types and quantities of enhanced weapons (machine guns) to a specific NRC licensee or certificate holder, is authorized to make this type of transfer.

The commenter indicated that the basis for this comment was that ATF was not intending to revise its regulations to add approved NRC licensees and certificate holders to the list of entities that are authorized to obtain machine guns. Therefore, the commenter was concerned that without explicit clarification, the holder of an ATF FFL would be reluctant to transfer machine guns to approved NRC licensees and certificate holders, notwithstanding the NRC's and the ATF's written authorizations.

*Response:* The Firearms Guidelines developed by the NRC, DOJ, FBI, and ATF and approved by the U.S. Attorney General define the overall process for NRC licensees and certificate holders obtaining enhanced weapons. The proposed rule would require the NRC to document in writing its approval of an application for enhanced weapons to the applying licensee or certificate holder. The licensee or certificate holder would then be required to provide a copy of the NRC's approval to the holder of an FFL who will supply the enhanced weapons. The holder of the FFL would include a copy of the NRC's approval with the FFL's application to ATF to transfer the specific weapons to the NRC licensee or certificate holder. Prior ATF approval must be received to transfer the weapons.

ATF staff has indicated that ATF does not intend to revise any of its regulations to implement the provisions of section 161A. Therefore, the issued Firearms Guidelines and the specific NRC approval to obtain enhanced weapons should provide sufficient evidence to the holder of an FFL that they are submitting a lawful request to transfer such weapons. The holder of an FFL can contact ATF in advance regarding proposed transfers to NRC licensees or certificate holders. Finally, before ATF approves the transfer request and any weapons are actually transferred, ATF can consult with the NRC if any questions are identified regarding a specific proposed transfer.

*D. Firearms Background Checks for Armed Security Personnel (Formerly Proposed § 73.18, Now Revised Proposed § 73.19)*

*Comment D.1:* One commenter asked if the proposed rule allows licensees to begin firearms background checks as soon as they have applied for preemption authority but before the NRC approves their application. If this is correct, under what authority would the licensee request the background check information? A second commenter requested clarification on whether some, or all, of the licensees' armed security personnel would be subject to a firearms background check if the licensee decides to implement § 73.18. A third commenter requested clarification on whether firearms background checks (NICS checks) are completely separate from any other background check performed on people who do not have access to enhanced weaponry. A fourth commenter requested clarification on whether there is any change to existing background check requirements for security personnel under 10 CFR part 73, if they will not have access to enhanced weapons.

*Response:* The requirements for firearms background checks have changed substantially from the October 2006 proposed rule due to changes in the Firearms Guidelines. Under the revised proposed regulations, all licensees and certificate holders that fall within the classes of facilities, radioactive material, or other property designated under § 73.19(c) and who employ covered weapons as part of their protective strategy would be required to complete satisfactory firearms background checks for all security personnel whose official duties require, or will require, access to covered weapons. Affected licensees and certificate holders must begin these checks within 30 days of the effective date of a final rule designating such classes of facilities, radioactive material, or other property. Applicants for a new license or CoC may only begin submitting their security personnel for a firearms background check after the NRC has issued their respective license or CoC.

A firearms background check is a separate action from the background investigation required as part of an access authorization program required under 10 CFR part 73 or for a personnel or material security clearance required under 10 CFR chapter 1. The revised proposed firearms background check requirements would not alter these personnel security, material security, or access authorization program requirements.

*Comment D.2:* A commenter asked if the disqualifying criteria for the NICS background checks were available for licensee review.

*Response:* The disqualifying criteria are available for public review under ATF's regulations at 27 CFR 478.32. ATF's regulations may be found at the National Archives and Records Administration's Web site for the Code of Federal Regulations: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.* Additionally, the NRC issued a generic communication in 2008 titled: Regulatory Information Summary RIS–2008–10, "Notice Regarding Forthcoming Federal Firearms Background Checks," dated May 13, 2008. Enclosure 1 to this RIS contained the disqualifying criteria and the RIS provided additional information resources to licensees, certificate holders, and their security personnel. RIS–2008–10 can be found in the NRC's Electronic Reading Room under ADAMS Accession No. ML073480158.

The NRC also issued RIS–2008–10, Supplement 1, "Notice Regarding Forthcoming Federal Firearms Background Checks," dated December

22, 2008. Supplement 1 provided further information on the implementation of the firearms background checks. It can be found in the NRC's Electronic Reading Room under ADAMS Accession No. ML082340897.

*E. Reporting of Safeguards Events (§ 73.71 and Appendix G to Part 73)*

*Comment E.1:* One commenter stated that the October 2006 proposed rule would require licensees to report particular incidents within a certain time from discovery. The commenter indicated that additional time is often necessary to determine whether an event is reportable or not. The commenter suggested the reportability clock should start when the event is determined to be reportable, not when it is discovered. The commenter believes this position is implied in previous NRC guidance, such as NUREG–1304, "Reporting of Safeguards Events," dated February 1988. The commenter recommends the NRC clarify the rule language (or clarify in guidance documents) that additional time may be required to determine whether a security event is actually reportable or not. This approach would minimize the submission of unnecessary notifications and written reports. A second commenter indicated that no exception language (*i.e.,* back out clause) exists regarding the submission of follow-up written reports for situations in which the original telephonic report is retracted or for situations for which the reported event never advances beyond the threshold specified in the original proposed Appendix G to part 73, paragraph II. A third commenter indicated that the proposed changes to Appendix G to part 73 would result in unnecessary notifications.

*Response:* While the NRC agrees that the overall goal of reducing unnecessary notifications is worthy, the NRC continues to believe that the time period for making notifications to the NRC should begin at the time of discovery, as opposed to when the licensee concludes a reportable event has occurred. This approach is preferred for two reasons.

First, the NRC needs event notifications in a timely manner to integrate them into its ongoing assessment of the current threat environment. Security events occurring at multiple facilities may indicate a broader trend; a seemingly innocuous event occurring at a single site is quite different from similar events occurring at multiple sites. In a threat assessment, "connecting the dots" between multiple intelligence or threat threads can allow authorities to develop a larger mosaic, but this integration requires prompt notification from licensees. Second, the use of "time of concluding" when a reportable event occurs could allow a significant amount of time to lapse before a licensee makes the notification. This time lapse could also affect the accuracy of the ongoing assessment of the current threat environment. The current language in § 73.71 refers to "time of discovery," and the commenters have not indicated that licensees are unable to comply with current requirements.

The NRC encourages licensees to report security notifications and then subsequently retract them if appropriate (*e.g.,* as invalid events). This is preferable to allowing licensees to delay or not make a notification that could potentially add a critical piece to the threat puzzle. In comparison, the NRC routinely receives safety-related notifications from power reactor licensees of actuation of an engineered safety feature that are subsequently retracted as an "invalid" actuation. Therefore, the NRC agrees with the commenter that written follow-up reports are not necessary for event notifications that are retracted by the licensee. Accordingly, the NRC would add a new requirement to revised proposed § 73.71(m)(13) to indicate that a written follow-up report is not required for events that are retracted before the 60-day written report due date. However, for events that are retracted after the written follow up report is submitted to the NRC, the licensee would be required to submit a revised written report to the NRC in accordance with revised § 73.71(m). This revised report is necessary to ensure that the official agency record describing the event is correct.

*Comment E.2:* Several commenters indicated that the wording used to describe the types of events that reactor licensees must report under the 15-minute standard is confusing and is inconsistent with NRC Bulletin 2005–02 (*see* ADAMS Accession No. ML051740058). One commenter recommended deleting the term "safeguards threat" from § 73.71(a). One commenter suggested removing the word "threat" in order to be more consistent with original proposed Appendix G to part 73, paragraph I. One commenter recommended replacing the language in original proposed Appendix G to part 73, paragraph I (a) on "actual or imminent threat against a nuclear power plant" with "an attack by a hostile force against the facility." One commenter indicated that the proposed notification did not address notification to local law enforcement agencies (LLEA) consistent with NRC Bulletin 2005–02, nor did it provide allowance for delaying the notification to the NRC to complete the LLEA notification.

*Response:* The NRC agrees that the clarity of the regulation should be improved and made consistent with NRC Bulletin 2005–02. The NRC would replace the term "safeguards threat" with "hostile action" to indicate the urgency of the situation. The NRC would add clarity by simplifying the wording in § 73.71(a) and incorporating the text from original proposed paragraph I(b) of Appendix G to part 73. The NRC would also remove the 15-minute notification from Appendix G to part 73 as it would be duplicative with § 73.71(a).

Additionally, the NRC would apply the 15-minute notification requirement to Category I SSNM facilities, and to significant shipments from these licensees involving SNF, HLW, and Category I SSNM in a new paragraph (b) to Appendix G to part 73.

These changes are necessary to accomplish the agency's strategic communication mission responsibilities (*see* Section III, "Discussion," of this document).

The NRC agrees that notifications to LLEA to request immediate assistance should take precedence over lengthy event notifications to the NRC. However, because of the NRC's strategic communication missions, the NRC would not delay the initial notification to the NRC but would simplify the notification information to allow both notifications and requests for assistance to be made as rapidly as possible. Therefore, the NRC would add a sentence to proposed § 73.71(a) and (b) to indicate that a licensee's or certificate holder's request to LLEA for assistance in this event may take precedence over the notification to the NRC.

*Comment E.3:* Several commenters disagreed with the requirement to establish an open and continuous communications channel following a 15-minute notification. One commenter indicated that this new requirement for a continuous communication channel was not included in NRC Orders, the "EPAC," or NEI guidance document 03–12. The commenter recommended this provision be eliminated and follow-up notifications made in accordance with § 50.72. Another commenter indicated this provision was more stringent that NRC Bulletin 2005–02. The commenter recommended that the requirement be removed and not apply to 15-minute notifications. Another commenter disagreed with the requirement to establish an open and continuous communications channel following a

one-hour notification for transportation security events. The commenter argued that to mandate in all instances that a licensee establish a continuous communication channel detracts from a full integrated response to the security event. The commenter recommended that the NRC retain the discretion allowed by the current regulation so that priority can be given to maintaining safety.

*Response:* The NRC disagrees with these recommendations. Under the current regulations in § 73.71(a)(3) and (b)(2), licensees making a one-hour notification (*e.g.,* for an attack against either a facility or against a transport) are currently required to maintain an open and continuous communication channel, upon request from the NRC. Consequently, given this current regulation, the commenters' arguments would only apply to the time from minute 15 (time of the event notification) to minute 60. After 60 minutes, establishing a continuous communications channel upon NRC request is required under existing regulations.

However, the NRC recognized that this time would be extremely busy for licensee personnel. Therefore, the NRC would provide additional flexibility in the proposed rule. After a 15-minute notification, the licensee would only be required to establish the continuous communication channel after the following occurred: (1) The licensee completed other required notifications (*e.g.,* declaration of an emergency or requesting local law enforcement personnel assistance); (2) the licensee completed any immediate actions to place the plant in a safe condition or stabilize the plant; or (3) 60 minutes elapsed from event discovery. The NRC also would provide flexibility and clarity regarding the personnel appropriate to staff such a communication channel. The communication channel could be staffed by personnel from the licensee's security, operations, or emergency response organizations at a location of the licensee's discretion.

*Comment E.4:* Several commenters disagreed with the requirement to establish an open and continuous communications channel following a four-hour notification by a reactor licensee. One commenter raised the same arguments as with this requirement following 15-minute notifications. The commenter indicated this provision was unnecessary and recommended this provision be eliminated. Another commenter indicated that voluntary reporting had been working very well and there did not appear to be regulatory justification for the underlying notification requirement or the continuous communication channel requirement.

*Response:* The NRC did not propose a requirement in the October 2006 proposed rule to establish a continuous communication channel following a four-hour suspicious event notification (*see* proposed § 73.71(e)(5) at 71 FR 62867). The NRC is not changing its original approach in this proposed rule. Accordingly, § 73.71(h)(8) would not require a continuous communications channel for four-hour event notifications. As discussed previously, the NRC has concluded that incorporating suspicious event notifications in § 73.71 is necessary not only to understand patterns that are occurring at multiple sites, but also to achieve regulatory stability through the elimination of "voluntary reporting requirements."

*Comment E.5:* One commenter indicated that making a one-hour report resulted in very "sketchy" information and suggested that two or four hours were a more appropriate time. The commenter indicated that if additional time were available, the licensee would be able to "discount" many of these notifications before they were made (*i.e.,* conclude that they were unnecessary before the notification is made, rather than retracting a previous notification).

*Response:* The NRC disagrees and views the proposed one-hour notifications as appropriate. (*See also* response to Comment E.1 in this document on delaying notifications until complete information is available).

*Comment E.6:* Two commenters disagreed with the removal of the word "credible" from original proposed Appendix G to part 73, paragraph II(a). The commenters indicated that this was inappropriate and that, without the qualifying language, all manner of threats and unnecessary reports would be made. The commenters recommended returning to the current wording of this regulation.

*Response:* The NRC disagrees. In the October 2006 proposed rule (*see* 71 FR 62840), the NRC had proposed removing the word "credible" before the word "threat." As the October 2006 proposed rule stated, "The Commission's view is that a determination of the 'credibility' of a threat is not a licensee responsibility, but rests with the Commission and the intelligence community." The commenters are correct that removing the qualifying language "credible" may increase the number of notifications made by licensees. However, without the licensee's consulting with local law enforcement or the NRC staff, the NRC's view is that a licensee could not adequately assess the credibility of all potential events within the time limit of this one hour notification (*i.e.,* one hour from time of discovery). Therefore, the NRC would require licensees to make the required notification for all such events. Consequently, the NRC would continue the original approach of removing the qualifying term "credible" in revised proposed Appendix G to part 73, paragraph I(a). The NRC will continue to monitor trends and patterns for security event notifications. Should the results of this monitoring, following implementation of this proposed approach, indicate that an inappropriate burden has been placed on licensees or NRC Headquarters Operations Center staff, then the NRC will evaluate the need for further changes to this requirement by rulemaking.

*Comment E.7:* Two commenters disagreed with the approach in the original proposed Appendix G to part 73, paragraph II(b) and indicated that this notification was too broad. One commenter indicated that the proposed language would require a one-hour report for any improper entry or attempted entry into a protected area (PA), a vital area (VA), or the owner controlled area (OCA). The commenter indicated that on a daily basis plant workers may inadvertently attempt to gain access to a VA to which they are not currently authorized access. These events are not security threats and therefore should not be reported as such. The commenters indicated that these events should be qualified by some intent to committing radiological sabotage or "an intentional act by an unauthorized individual."

*Response:* The NRC agrees. The NRC would revise proposed Appendix G to part 73, paragraph I(b)(1) to require one-hour notifications for actual entry of an unauthorized person into a PA, VA, material access area (MAA), controlled access area (CAA), or transport. This would be accompanied by revised paragraph I(b)(2) where the NRC would require one-hour notifications for the attempted entry of authorized persons with malevolent intent into a PA, VA, MAA, CAA, or transport vehicle or shipment. The NRC notes that the term "controlled access area" is defined in § 73.2 and is not the same as the term "owner controlled area" that is used at power reactor facilities. A CAA can be used to store special nuclear material (SNM) at a range of facilities possessing SNM that are subject to § 73.67. This includes power reactors as well as fuel cycle facilities.

*Comment E.8:* One commenter indicated that original proposed Appendix G to part 73, paragraphs II(c) and II(d) both needed further clarification. The same commenter urged the NRC to focus event notifications on intentional acts or omissions that would have allowed unauthorized access to any area or transport for which the licensee is required to control access.

*Response:* The NRC agrees that additional clarification to Appendix G to part 73 is warranted. Accordingly, the NRC would split revised proposed, paragraph II(e) into two components for events involving failures, degradation, or the discovered vulnerabilities in safeguards systems, for which compensatory measures have not been employed, that could permit unauthorized or undetected access of explosives or incendiaries beyond a vehicle barrier, or personnel or contraband into a PA, VA, MAA, CAA, or transport. With regard to the commenter's suggestion that the language focus on intentional acts or omissions, the NRC disagrees with this suggestion. The current Appendix G to part 73, paragraph I(c) does not limit these events to intentional acts or omissions. For example, the cause of the notification may arise from barrier degradation or natural events. Focusing or screening criteria on intentional acts or omissions would preclude notifications that the NRC deems necessary.

The NRC would revise proposed Appendix G to part 73, paragraph I(c) to require notifications for actual introduction of contraband into a PA, VA, MAA, CAA, or transport and attempted introduction with malevolent intent of contraband into a PA, VA, MAA, CAA, or transport. Revised proposed Appendix G to part 73, paragraph I(d) would address an actual or attempted introduction of explosives or incendiaries beyond the vehicle barrier. The language in paragraphs I(c) and I(d) differs because some items are considered contraband when they are located at a nuclear facility, but not when they are away from the facility (*e.g.,* a handgun and ammunition). Other items are always considered contraband—irrespective of their location (*e.g.,* explosives and incendiaries).

*Comment E.9:* One commenter indicated that the four-hour notification provision was unnecessary and recommended that this provision be eliminated. The commenter indicated that voluntary reporting had been working very well and there did not appear to be regulatory justification for the four-hour notification requirements. Several commenters objected to the original proposed Appendix G to part 73, paragraph III(a)(3) to require four-hour notifications following licensee notification of local, State or national law enforcement officials, or a law enforcement response to the facility not otherwise covered by original proposed paragraphs I or II. One commenter suggested that there was no basis for this requirement and indicated that many of the calls to law enforcement officials currently made by licensees have no nexus to the licensee's security activities. Another commenter indicated that this proposed requirement is problematic because its scope is not clearly defined.

*Response:* The NRC continues to view the reporting of suspicious activities to the NRC as an important component in evaluating the threat against licensed facilities and radioactive material. Individual reports are integrated into a mosaic of information that is reviewed with law enforcement and homeland security officials, as appropriate. The NRC views the long-term imposition of a "voluntary" notification for suspicious events as inconsistent with regulatory stability and the agency's strategic goals for fostering transparency and public involvement in developing and imposing regulatory requirements.

However, the NRC agrees that requirements must be clearly specified in regulations and have a nexus to NRC's mission. Consequently, the NRC agrees that a notification to local law enforcement that has no nexus to licensee security activities should not require a notification to the NRC. However, the NRC does continue to view notifications to law enforcement that are related to implementation of the physical security program as appropriate for NRC notification so that the NRC can be prepared to respond to public or press inquiries on the security event. This is similar to the current requirement for power reactor event notifications in § 50.72(b)(2)(xi). Therefore, the NRC would narrow the scope of the revised proposed paragraph II(c) to require the existence of one of the following: (1) A nexus to the physical protection program; or (2) a reasonable expectation for public or media inquiries following a law enforcement response to the facility. The NRC also would add language to eliminate duplicate notifications.

*Comment E.10:* Several commenters indicated that it would be hard for licensees to differentiate between the one-hour and four-hour notifications for tampering and manipulation. A second commenter indicated that the proposed language would result in unnecessary one-hour notifications and suggested that the phrase "unauthorized use of" is problematic.

*Response:* The NRC agrees that a clearer distinction between one-hour and four-hour tampering event notifications is appropriate. The NRC also agrees that the phrase "unauthorized use of" is unclear. Therefore, the NRC would propose one-hour tampering notifications in the revised proposed Appendix G to part 73, paragraphs I(a)(3) and I(a)(4). The revised text would require that the potential tampering event leads to the interruption of normal operations of the facility. In revised proposed paragraphs II(b)(1) and II(b)(2), these four-hour notifications would not require the potential tampering event to lead to the interruption of facility operation. The NRC also would add clarity by indicating that the tampering refers to "unauthorized operation, manipulation, or tampering with reactor controls or with safety-related or non safety-related structures, systems, and components (SSCs)." A four-hour notification would be added in revised proposed II(b)(3) to address unauthorized operation, manipulation, or tampering with reactor controls or with security-related SSCs (*i.e.,* the NRC would not expect tampering with security-related SSCs to affect normal reactor or facility operations).

*Comment E.11:* One commenter indicated that the provision of original proposed Appendix G to part 73, paragraph III(c) on follow-up verbal communications regarding suspicious events that would be reported under original revised paragraph III(a)(1) are unnecessary and should be removed and addressed in internal NRC procedures.

*Response:* The NRC disagrees. This proposed language ensures that the NRC Headquarters Operations Center is the single point of receipt for security notifications made to the NRC. These notifications would then be forwarded to the appropriate NRC organization.

This information handling protocol is similar to the process for classified notifications to the Headquarters Operations Center described in revised proposed paragraph III of Appendix A to part 73.

*Comment E.12:* One commenter indicated that licensees should be required to train personnel on indications of tampering. The commenter also suggested that unless licensees are required to formally incorporate tampering assessments into all corrective actions taken for target set equipment malfunction and

mispositioning events, this proposed regulation would not have much meaning.

*Response:* In § 73.55(i), the NRC has added requirements for power reactor licensees to ensure that their physical protection program includes surveillance, observation, and monitoring provisions to identify indications of tampering. The NRC may consider similar requirements for other classes of licensed facilities in future security rulemakings. The commenter suggests that tampering assessments be incorporated into certain corrective action reports. That suggestion would require changes to quality assurance program regulations which are beyond the scope of this rulemaking.

*Comment E.13:* One commenter asked if there were restrictions on which licensee personnel can make four-hour event notifications. The commenter also asked if these notifications also would be made through the NRC headquarters operations personnel.

*Response:* The licensee may use any trained and qualified individual to make a four-hour event notification to the NRC. All notifications required under § 73.71 would be made under revised proposed § 73.71(h) to the telephone numbers for the NRC Headquarters Operations Center, which are specified in revised proposed Table 1 in Appendix A to part 73.

*Comment E.14:* One commenter noted that the exemption for the use of nonsecure communication systems to make exigent or emergency notifications containing Safeguards Information should be updated from the current § 73.71 to refer to the correct exemption paragraphs in §§ 73.22 and 73.23 under the final Safeguards Information rule the NRC is developing.

*Response:* The NRC agrees in part and has revised the proposed language in paragraph (h) to refer to the correct paragraph in § 73.22 to reflect the final Safeguards Information rule. The NRC issued the final Safeguards Information rule on October 24, 2008 (73 FR 63545), effective February 23, 2009. The NRC would not include a reference to § 73.23 at this time because this provision does not currently apply to licensees subject to § 73.71.

*Comment E.15:* One commenter stated that it was not clear what adding the term "current" to "safeguards event log" in § 73.71(f) meant. The commenter asked if the NRC was intending to require a new or additional time restriction requirement for these records. The commenter recommended that the term "current" be removed. One commenter indicated that the proposed change from "that committed" to "that described" in original proposed Appendix G to part 73, paragraph IV(b) will be problematic and result in unnecessary security log entries. The commenter recommends that the NRC revert to the current "that committed" language.

*Response:* The NRC agrees. The proposed regulations would specify the timeliness of adding these records and the retention period for these records. Therefore, the modifier "current" does not add value or clarity to the "safeguards event log" regulation and would be deleted. The NRC also would revise proposed paragraph IV(e) in Appendix G to use "that committed" to in a licensee's or certificate holder's NRC-approved security plan.

*Comment E.16:* One commenter indicated that the logable events paragraph in the original proposed Appendix G to part 73, paragraph IV(b) has always been difficult to implement under the current paragraph II(b) in Appendix G to part 73.

The commenter recommends that this provision be removed.

*Response:* The NRC disagrees. The original revised paragraph has only a minor difference from the current regulation. This paragraph is intended to sweep security-related events not otherwise specifically identified in Appendix G to part 73 into the licensee's or certificate holder's security log, where they can be subsequently reviewed by NRC staff. The NRC considers this capability important in the security inspection program, and it should be retained. However, the NRC will evaluate whether regulatory guidance can be improved in this area.

*Comment E.17:* Several commenters objected to the proposed requirement to submit a written report following a 15-minute notification under the original proposed § 73.71(a). Many used the same objections as to the 15-minute notification itself or duplication with the one-hour notification. One commenter viewed this requirement as redundant and recommended that it be removed. Another commenter recommended that written follow-up reports for 15-minute notifications be added to the exception for written reports in original proposed § 73.71(g)(2). One commenter indicated that the original proposed regulation indicating which telephonic notifications do not require a written follow-up report was unnecessary regulatory language and was not included in NRC Orders, the "EPAC," or NEI guidance document 03–12.

*Response:* The NRC agrees in part and disagrees in part. The NRC agrees that one-hour notifications following a 15-minute notification for the same event are redundant. Therefore, the NRC would add a paragraph to revised proposed § 73.71(c) and (d) (one-hour notifications) to eliminate redundant notifications from events reported under revised proposed § 73.71(a) and (b), respectively. However, the NRC continues to view written follow-up reports as an important component of the event notification process. The NRC also views language excluding follow-up written reports following certain events as providing regulatory clarity and reducing licensee burden. Therefore, the NRC would retain a requirement for written follow-up reports following 15-minute notifications to provide for NRC event analysis and review, as well as for evaluation of any necessary licensee corrective actions. However, the NRC would remove language in Appendix G to part 73 referring to "followed by a written report within 60 days," as this language is duplicative of the language in § 73.71, which addresses follow-up written reports after security event telephonic notifications.

*Comment E.18:* One commenter suggested adding a new requirement to original proposed § 73.71(g)(11) that is similar to the proposed language in paragraph (f)(2) to revise the records retention requirements for follow-up written reports to add "or until termination of the license."

*Response:* The NRC agrees. The NRC would include "or until termination of the license" in the revised proposed § 73.71(m)(12).

*Comment E.19:* One commenter stated that updated guidance is needed on implementing this revised regulation for both event notifications and written reports. The commenter recommends that the NRC issue updated guidance before issuing a final rule. A second commenter asked if the final rule or regulatory guidance will give licensees detailed information on what reaches the threshold of tampering.

*Response:* The NRC published draft regulatory guide DG–5019 on event notifications for public comment on July 6, 2007 (72 FR 37058). The NRC also held a public meeting to discuss the draft regulatory guide on July 27, 2007. Because of the additional changes to the event notification regulations, the NRC intends to reissue DG–5019 for additional public comment.

The NRC will also hold an additional public meeting to discuss the reissued DG–5019. A final regulatory guide will be issued following the publication of a final rule.

*F. Information Collection Requirements*

*Comment F.1:* One commenter responded to the NRC's question on whether the proposed information collection requirements are necessary (regarding the proposed 15 minute notification requirement in § 73.71(a) for imminent or actual threats) and stated that this notification has no practical utility. The commenter indicated that the NRC is not a response organization and brings no resources to bear to resist an actual threat. The commenter indicated that the resources and time spent communicating with the NRC would be better spent communicating with local resources that could actually assist in defending the licensee's facility.

*Response:* The NRC disagrees. These licensee and certificate holder notifications are necessary for the NRC to accomplish its strategic communications missions (*see* Section III, "Discussion," of this document). Therefore, they would be retained.

*Comment F.2:* One commenter responded to the NRC's question on the estimate of the burden and indicated that the number of responses per site and the time per response estimated by the NRC for the fingerprinting provisions in proposed § 73.19(e)(1) were too low. The commenter suggested a better estimate of the burdens would be 975 annual responses per site per year and that the time to accomplish each response would be 1 hour.

*Response:* The NRC has revised the estimated information collection burden for this provision in this proposed rule to reflect the commenter's suggestions.

*Comment F.3:* One commenter responded to the NRC's question on whether a proposed information collection burden (regarding the proposed 15-minute notification requirement in § 73.71(a) for imminent or actual threats) could be minimized, including the use of automated collection techniques. The commenter suggested that this burden should be completely automated, if not removed. The commenter suggested that an automated feature should be a push button that notifies the NRC that a threat exists. Only after the threat is neutralized should the licensee be required to provide additional details to the NRC.

*Response:* While the concept of an automated imminent attack or threat notification system may be desirable, the NRC believes there are significant technological and policy challenges to be resolved to implement such a system. These challenges would include resolution of software issues such as: Message content, licensee identification, authentication, and non-repudiation protocols. Hardware issues could include circuit redundancy, independence, and tamper indication. Policy issues such as the degree of authentication and non-repudiation necessary to support automatic command and control actions, without human verification of the initial information, also would need to be addressed. Therefore, the NRC would not adopt this suggestion. However, the NRC may pursue evaluation of this or a similar communications and command and control capabilities in the future to reduce industry burden.

**V. Section-by-Section Analysis**

*A. Overview*

This proposed rulemaking would implement the new voluntary enhanced weapons and preemption authority and the mandatory firearms background check requirements that are authorized under section 161A of the AEA. The Commission is required by this statute to designate by rule or order the classes of facilities, radioactive material, or property appropriate for the application of this authority. The proposed regulations in this rule are consistent with Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General (*see* discussion in Section II, "Background," of this document).

This proposed rulemaking to part 73 would revise three existing sections (§§ 73.2, 73.8, and 73.71); add two new sections to (§§ 73.18 and 73.19); revise Appendix A and Appendix G; and make conforming changes to §§ 73.46, 73.55, and Appendix B to part 73.

The NRC is also proposing a new NRC Form 754, "Armed Security Personnel Background Check" to implement the provisions of the firearms background check under proposed § 73.19. The NRC would make minor editorial changes to the instructions and the assisting text. Additionally, the NRC would revise Question 4 to simplify the question and also provide the option for multiple duty station locations.

*B. Definitions (§ 73.2)*

New definitions for the terms: *Adverse firearms background check, covered weapon, combined enhanced weapons authority and preemption authority, enhanced weapon, firearms background check, NICS, NICS response, satisfactory firearms background check, stand-alone preemption authority, and standard weapon* would be added in alphabetical order to the definitions in § 73.2(a). These new definitions are consistent with the definitions for the same terms found in the Firearms Guidelines issued by the Commission, with the approval of the U.S. Attorney General. New definitions for the terms: *High-level radioactive waste (HLW)* and *spent nuclear fuel (SNF)* would be added as conforming changes to the changes made to § 73.71 and Appendix G to part 73. The definitions for HLW and SNF are consistent with the definitions for these terms found in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101(12) and (23), respectively).

New paragraphs (b) and (c) would be added to § 73.2 to provide cross references to ATF's regulations and to FBI's regulations for selected terms within these new definitions, rather than explicitly defining these same terms in the NRC's regulations. These cross-referenced terms would include *handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition, and large capacity ammunition feeding device* (under ATF's regulations) and the terms *proceed NICS response, delayed NICS response, and denied NICS response* (under FBI's regulations).

*C. Information Collection Requirements: OMB Approval (§ 73.8)*

Paragraph (b) would be revised to add §§ 73.18 and 73.19 to the list of sections in part 73 that contain information collection requirements and that have been approved by OMB under control number 3150–0002.

Paragraph (c) would be added to specify the OMB control numbers for three forms referenced under specific sections of part 73, because these forms have a separate OMB control number than their initiating or referencing regulation. Two forms currently exist, and their inclusion would be added to this paragraph as a corrective change (NRC Form 366 and FBI Form FD–258) under OMB control numbers 3150–0104 and 1110–0046, respectively. The third form would be added to this paragraph as a new form (NRC Form 754) under OMB control number 3150–0204.

*D. Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws (§ 73.18)*

New § 73.18 would contain requirements for a licensee or certificate holder to apply for stand-alone preemption authority or to apply for combined enhanced-weapons authority and preemption authority under section 161A of the AEA. Due to the structure of section 161A, licensees and

certificate holders who apply for enhanced-weapons authority, must also apply for and receive NRC approval of preemption authority as a necessary prerequisite to receiving enhanced-weapons authority. Proposed paragraph (a) would describe the purpose of the section and paragraph (b) would contain general requirements applicable to both types of authority.

Paragraph (c) would list the designated classes for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority. Section 161A requires the Commission to designate classes of facilities, radioactive material, and other property for which the use of such authority is appropriate. The NRC would apply these requirements to two classes of facilities: (1) Power reactor facilities; and (2) Category I SSNM facilities authorized to possess or use a formula quantity or greater of SSNM, where the SSNM has a radiation level of less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.28 feet [ft]), without regard to any intervening shielding. The NRC intends to specify any additional classes of authorized facilities, radioactive material, and other property in a separate future rulemaking. Similarly, the proposed rule would refer to both licensees and certificate holders to be consistent with the scope of the statute, although the NRC would designate only power reactor facilities and Category I SSNM facilities as appropriate for section 161A authority (*i.e.,* these facilities are owned and operated by licensees).

In paragraph (d), the NRC would require authorized licensees and certificate holders (*i.e.,* those that fall within designated classes of facilities, radioactive material, and other property) who are interested in obtaining this authority to apply for stand-alone preemption authority. The benefits that would accrue to a specific licensee or certificate holder under this authority would likely vary depending on the locale of the affected facility (*i.e.,* State and local firearms restrictions can vary widely). Separately, the benefit that would accrue to licensees and certificate holders transporting designated classes of radioactive material would be a consistent Federal standard, rather than varying State standards, and the ability to maintain weapons in a loaded and ready for use condition when escorting a shipment across State lines (Federal law requires that weapons be transported across State lines in an unloaded condition). Before submitting their application to the NRC, licensees and certificate holders must have completed satisfactory firearms background checks for their security personnel. Alternatively, licensees and certificate holders can indicate that they have commenced the firearms background checks in their application and then supplement their application with information that they have completed satisfactory firearms background checks. The NRC would document its approval of the application in writing.

In paragraph (e), the NRC would require authorized licensees and certificate holders (*i.e.,* those that fall within designated classes of facilities, radioactive material, and other property) to apply to the NRC for combined enhanced-weapons authority and preemption authority. The benefit that would accrue to a specific licensee or certificate holder under this authority would be obtaining enhanced weapons to defend their facility or shipment of radioactive material or other property. Additionally, due to the structure of section 161A, licensees and certificate holders applying for enhanced weapons authority must also apply for and obtain preemption authority. Therefore, the NRC would use the term "combined enhanced-weapons authority and preemption authority" to refer to this authority. Licensees and certificate holders who previously applied for preemption authority under paragraph (d) would not be required to reapply for that authority, but would indicate the date the NRC had approved their previous application. Before submitting their application to the NRC, licensees and certificate holders must have completed satisfactory firearms background checks for their security personnel.

Alternatively, licensees and certificate holders can indicate that they have commenced the firearms background checks in their application and then supplement their application with information that they have completed satisfactory firearms background checks. The NRC would document its approval of the application in writing.

In paragraph (f), the NRC would specify the technical information that must be included with a licensee's or certificate holder's application to obtain enhanced weapons. The NRC would describe the requirements of the security plans, training and qualifications plans, and contingency response plans supporting the use of enhanced weapons. The NRC would require licensees and certificate holders to develop their training and qualification plans for enhanced weapons based upon standards set by nationally-recognized firearms organizations or Federal agencies. The NRC intends to include information on firing range construction for enhanced weapons in the regulatory guidance being developed. The NRC would require that applying licensees and certificate holders submit for prior review and approval, a new or revised security plan, training and qualification plan, and safeguards contingency plan to reflect the use of these specific enhanced weapons the licensee or certificate holder intends to employ; and to provide a weapons safety assessment of the onsite and offsite impact of the specific types and caliber of enhanced weapons it intends to employ. The NRC would take this approach because the NRC is responsible for making a determination on the technical adequacy of the specific weapons the licensee or certificate holder proposes to use. Consequently, the NRC would require licensees and certificate holders to submit these plans and analyses to the NRC as a license or certificate amendment, in accordance with the applicable provisions of parts 50, 70, and 76.

Additionally, licensees and certificate holders who have been approved for enhanced weapons and who subsequently desire to obtain different types, calibers, or quantities of enhanced weapons must repeat this process to obtain the weapons.

In paragraph (g), the NRC would require licensees and certificate holders to provide a copy of the NRC's approval letter to the holder of an ATF FFL that will be providing the enhanced weapons to the licensee or certificate holder. The holder of an ATF FFL would include the NRC's approval in the application to ATF to transfer enhanced weapons to the licensee or certificate holder. ATF must approve in advance all transfers of enhanced weapons.

Licensees and certificate holders obtaining enhanced weapons also would be required to comply with applicable ATF regulations, registration, and tax-stamp requirements. Enhanced weapons obtained by the licensee or certificate holder must be registered under the name of the licensee or certificate holder (*i.e.,* they may not be registered under the name of a security contractor to the licensee or certificate holder). Following the NRC's approval of a licensee's or certificate holder's application, if the licensee or certificate holder wants to obtain different or additional enhanced weapons, they would reapply under this section. The NRC also would indicate that licensees and certificate holders obtaining

enhanced weapons may, at their discretion, also apply to ATF to obtain an FFL or a special occupational tax (SOT) stamp (associated with the transfer of a machine gun). Obtaining an FFL and/or an SOT stamp would provide NRC licensees and certificate holders with greater flexibility in transferring and receiving machine guns. However, it also would subject them to greater regulation, inspection, and oversight by ATF.

In paragraph (h), the NRC would require licensees and certificate holders to complete training and qualification of security personnel on any enhanced weapons, before these personnel employ those weapons to protect the facility. Recurring training and requalification on any enhanced weapons also would be required in accordance with the licensee's or certificate holder's approved training and qualification plan. The NRC would reserve paragraph (i) to avoid confusion.

In paragraph (j), the NRC would treat the use of enhanced weapons the same as existing weapons (*e.g.,* standards on deadly force). Accordingly, the NRC would cross-reference to the applicable security regulations for other classes of facilities or radioactive material.

In paragraph (k), the NRC also would require Commission licensees and certificate holders to notify the NRC of any adverse ATF inspection or enforcement findings received by the licensee or certificate holder regarding the receipt, possession, or transfer of enhanced weapons. The NRC would reserve paragraph (l) to avoid confusion.

In paragraph (m), the NRC would define permissible reasons to remove an enhanced weapon from an authorized licensee's or certificate holder's facility that would not constitute the transfer of an enhanced weapon under ATF's regulations (training and escorting shipments of radioactive material that fall within a class designated under paragraph (c)). The NRC would reserve any additional reasons, if necessary, for a future rulemaking. The NRC would require that records be maintained to track not only the removal of enhanced weapons from licensee's or certificate holder's facility but also the return of such weapons to the facility. The NRC would also describe actions that would constitute a transfer of enhanced weapons. Such a transfer would require application to and prior approval from ATF. The NRC would indicate that weapons that are not returned to the facility are to be considered stolen or lost or an approved transfer. Finally, the NRC would indicate that the issuance of an enhanced weapon to a security individual with the subsequent return of the weapon upon the completion of official duties would not constitute a transfer under ATF's regulations. The NRC would require NRC licensees and certificate holders to assist an ATF FFL in submitting the required paperwork to ATF to transfer the weapons to the licensee or certificate holder.

In paragraph (n), the NRC would describe requirements to transport enhanced weapons for activities that are not considered a transfer of the enhanced weapons. Enhanced weapons being transported would be unloaded and placed in a locked secure container. Ammunition for the weapon may be placed in the same container for transport. The exception to this requirement would be for purposes of escorting shipments of radioactive material or other property designated under paragraph (c). While escorting these shipments, the enhanced weapons would remain loaded and available for immediate use.

In paragraph (o), the NRC would describe requirements for conducting periodic inventories of enhanced weapons to verify that these weapons are not stolen or lost. The NRC would propose two types of inventories. First, a monthly inventory that would require counting the number of enhanced weapons that are present at the licensee's or certificate holder's facility. Licensees and certificate holders would be able to use electronic technology (*e.g.,* bar codes) to conduct this inventory. Second, a semi-annual inventory that would verify the serial number of each weapon that is present at the licensee's or certificate holder's facility. The monthly inventory would not require accounting for weapons that are located in in-plant ready-service containers that are locked and sealed with a TID. Instead, the inventory would verify the presence of the intact TID (indicating the container had not been opened). However, the semi-annual inventory would require a verification of all weapons at the licensee's or certificate holder's facility. The NRC would specify limits on the intervals between inventories. Records would be maintained on inventory results. Inventories would be conducted by two-person teams to prevent manipulation of inventory results. Minimum requirements on TIDs used for securing enhanced weapons would be specified.

Finally, inventory discrepancies would require resolution within 24 hours of identification. Otherwise, the discrepancy would be treated as if an enhanced weapon had been stolen or lost.

In paragraph (p), the NRC would describe requirements for notification of the NRC and local law enforcement officials of this event. Requirements on the timing of these notifications would be located in § 73.71. The NRC also would note that licensees and certificate holders possessing enhanced weapons are subject to a separate ATF requirement to notify ATF of any stolen or lost weapons registered at 49 CFR part 479 (*i.e.,* enhanced weapons).

In paragraph (q), the NRC would describe the records requirements for licensees and certificate holders relating to the receipt, transfer, and transportation of enhanced weapons. Retention requirements for records required under this section would be specified as up to one year after the licensee's or certificate holder's authority is terminated, suspended, or revoked.

Records also would be retained on completed inventories of enhanced weapons and on any stolen or lost enhanced weapons. Licensees and certificate holders would be permitted to integrate any records required under this paragraph with records required by ATF relating to the possession of enhanced weapons. Licensees and certificate holders would be required to make these records available to NRC inspectors and/or ATF inspectors upon request.

In paragraph (r), the NRC would describe requirements regarding the termination, modification, suspension, and revocation of a licensee's or certificate holder's section 161A authority. Licensees and certificate holders seeking termination or modification of their authority to possess enhanced weapons, or different types of enhanced weapons would be required to apply to the NRC in accordance with this section. Licensees and certificate holders would be required to transfer any enhanced weapons they will no longer be authorized to possess to an appropriate party in accordance with ATF's requirements; or the weapons can be surrendered to ATF for destruction. Licensees and certificate holders may reapply for this authority if it has been terminated, suspended, or revoked. The NRC would also establish criteria for revocation of the authority to possess enhanced weapons. Additionally, the NRC would promptly notify ATF of these actions.

*E. Firearms Background Checks for Armed Security Personnel (§ 73.19)*

New § 73.19 would contain requirements for a licensee or certificate holder to conduct a firearms background

checks mandated under section 161A of the AEA. The firearms background checks required by § 73.19 would be intended to verify that armed security personnel are not prohibited from receiving, possessing, transporting, or using firearms under Federal or State law. Proposed paragraph (a) would describe the purpose of the section.

In paragraph (b), the NRC would describe general requirements regarding firearms background checks. These checks would apply to all licensees and certificate holders that fall within the classes of facilities, radioactive material, and other property designated under paragraph (c), if the licensee or certificate holder uses covered weapons as part of its protective strategy. These checks would apply to all security personnel of such licensees and certificate holders, whose official duties require access to covered (*i.e.,* both standard and enhanced) weapons, irrespective of whether the security personnel are directly employed by the licensee or certificate holder or they are employed by a security contractor who provides security services to the licensee or certificate holder (*see also* new definitions for *Covered weapons, Enhanced weapons,* and *Standard weapons* in § 73.2).

The Firearms Guidelines required by section 161A refer to "security personnel whose official duties require access to covered weapons." The NRC would apply this criterion to individuals in the licensee's or certificate holder's security organization who handle, use, maintain, and repair covered weapons and inventory enhanced weapons. Specifically, individuals performing official duties involving access to covered weapons, including: carrying weapons (security personnel, supervisors, and response personnel); firearms instructors; armorers (repair and maintenance of weapons), weapons' issuance and receipt; and individuals inventorying enhanced weapons. This would not include warehouse or supply personnel who receive shipments of covered weapons, provided the weapons remain secured in their shipping containers, are promptly turned over to security personnel, and are promptly placed in secure weapons storage areas (*e.g.,* armories).

These checks would not apply to applicants for a license or a CoC until after the NRC issues the license or the CoC. These new licensees and certificate holders would not be able to commence firearms background checks until after the NRC issues their license or CoC. Additionally, these new licensees and certificate holders would be required to complete satisfactory firearms background checks for their affected security personnel before to the initial receipt of source, byproduct, or special nuclear material authorized by the license or CoC.

Within 30 days after the effective date of a final NRC rule designating classes of facilities, radioactive material and other property, affected licensees and certificate holders would be required to commence firearms background checks (*i.e.,* within 60 days after publication of the final rule in the **Federal Register**). Within 180 days after the effective date of a final NRC rule, affected licensees and certificate holders would be required to remove from duties requiring access to covered weapons any individual who has not completed a satisfactory firearms background check (*i.e.,* within 210 days after publication of the final rule in the **Federal Register**). During this 180-day transition period, affected licensees and certificate holders that currently possess enhanced weapons under an authority other than section 161a would be required to remove from any duties requiring access to enhanced weapons any security personnel who receive a "delayed" NICS response to their firearms background check. Subsequent to the 180-day transition period, affected licensees and certificate holders must complete a satisfactory firearms background check for (new) personnel whose duties would require access to covered weapons. During this 180-day period, affected licensees and certificate holders would be required to remove from duties requiring access to covered weapons any individual who receives a "denied" NICS response. However, individuals who receive a "delayed" NICS response would be permitted to continue their access to standard weapons until the 180-day period expires or the "delayed" NCIS response is resolved into a "denied" NICS response. Individuals who have been removed from duties requiring access to covered weapons due to a "denied" or "delayed" NICS response would be permitted to return to such duties if they subsequently receive a "proceed" NICS response (*i.e.,* they have completed a satisfactory firearms background check).

Security personnel who have a break in service or who transfer to another licensee or certificate holder would be required to complete a new firearms background check. However, a change in the licensee, certificate holder, security contractor, or ownership of the license or CoC would not trigger a new firearms background check. Firearms background checks would not replace other background checks required for access authorization, personal security clearances, or SSNM access clearances.

In paragraph (c), the NRC would designate the classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. In general, the NRC intends that this list would be consistent with the list contained in § 73.18(c). However, the Commission would not be constrained to make these lists identical. The NRC would apply these requirements to two classes of facilities in this rulemaking: (1) Power reactor facilities, and (2) Category I SSNM facilities authorized to possess or use a formula quantity or greater of SSNM, where the SSNM has a radiation level of less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.28 ft), without regard to any intervening shielding.

In paragraph (d), the NRC would describe the components of a firearms background check. A firearms background check would consist of two parts: (1) A check of an individual's fingerprints against the FBI's fingerprint system; and (2) a check of the individual's identity against the FBI's NICS. The NRC would propose a new NRC Form 754 for licensee or certificate holder security personnel to submit the necessary information to the NRC for forwarding to the FBI to perform the NICS portion of the firearms background check.

In paragraph (e), the NRC would describe the information that is to be submitted for each individual to conduct a firearms background check and would specify a retention period for this information.

In paragraph (f), the NRC would describe the requirements for periodic (*i.e.,* recurring) firearms background checks. Periodic firearms background checks would be required every 3 years. The NRC would use this interval to be consistent with the interval for recurring access authorization program criminal history records checks for power reactor security personnel under the recently added § 73.56(i)(1)(v)(B). The 3-year interval would permit licensees and certificate holders to reduce administrative costs. Licensees and certificate holders would also be able to conduct periodic firearms background checks at intervals of less than three years, if they so desire. The NRC would specify a timely submission period of three years and security personnel would be permitted to continue their access to covered weapons pending the licensee's or certificate holder's receipt of the NICS response. Similar to the requirements in paragraph (b), individuals who receive an adverse

firearms background check (during this periodic check) also would be removed from duties requiring access to covered weapons. These individuals would be eligible for reinstatement if they subsequently complete a satisfactory firearms background check.

In paragraph (g), the NRC would describe the requirements for affected licensees and certificate holders to notify the NRC that an individual with access to covered weapons has been removed from these duties because of the discovery of a disqualification or the occurrence of a disqualification under applicable Federal or State law. An exception to this requirement would be created to encourage the prompt identification of such information by the security personnel to their licensee or certificate holder (*i.e.,* the NRC would encourage security personnel to timely self disclose the occurrence of a disqualifying event).

In paragraph (h), the NRC would describe the requirements for affected security personnel to make timely disclosure of the occurrence of a disqualifying event at 18 U.S.C. 922 that would prevent them from receiving or possessing firearms.

Timely notification would be within 3 working days of occurrence of the event.

The NRC would reserve paragraph (i) to avoid confusion.

In paragraph (j), the NRC would describe the requirements for training security personnel on the following: (1) Disqualifying events of 18 U.S.C. 922; (2) ATF's implementing regulations; and (3) security personnel's responsibility to notify their licensee or certificate holder under the requirements of paragraph (h).

In paragraph (k), the NRC would describe the requirements for processing fingerprint checks as part of firearms background checks. This would include the submission of fingerprint cards to the NRC or the submission of electronic fingerprint records to the NRC. The proposed language would be similar to the existing regulations in § 73.57(d). Additionally, licensees and certificate holders would be required to include specific codes on the FBI Form FD–258 fingerprint cards or electronic fingerprint records to indicate whether the fingerprint check is solely for the purposes of a firearms background check or whether the firearms background check is being combined with an access authorization criminal history records check or a personnel security clearance records check. The use of these codes is necessary for the FBI to appropriately control dissemination of criminal history information. The NRC would reserve paragraph (l) to avoid confusion.

In paragraph (m), the NRC would describe the requirements for fees associated with processing firearms background checks. The NRC would charge the same fee for fingerprints submitted for a firearms background check that is currently imposed for fingerprints submitted for other NRC-required criminal history checks including fingerprints (*i.e.,* an NRC administrative fee plus the FBI's processing fee). In addition, the NRC would charge an administrative fee for processing the NICS check information, however, no FBI fee would be charged for the NICS check. The proposed language would be similar to the existing regulations in § 73.57(d). The cost of the fee will be specified on the NRC's public Web site with the existing fingerprint fee (*see* NRC Web page *http://www.nrc.gov/site-help/e-submittals.html* under the "Electronic Submittals System Notices" box). The NRC is proposing a fee of $26 to process both the NICS check information and the fingerprint checks per individual. This fingerprint processing fee is separate from the fingerprint processing fee for fingerprints submitted to complete a criminal history records check under the NRC's access authorization programs (*e.g.,* § 73.56 for power reactors). Further information on proposed costs is contained in Section XIV, "Regulatory Analysis," of this document.

In paragraphs (n) and (o), the NRC would describe obligations of the NRC regarding the processing of firearms background checks and reporting potential or suspected violations of law to the appropriate law enforcement agency. Under paragraph (o), the NRC would forward licensee and certificate holder notifications to the applicable Federal or State law enforcement officials.

In paragraph (p), the NRC would describe how individuals who have received an adverse firearms background check (*i.e.,* a "denied" or "delayed" NICS response) may do the following: (1) Obtain further information from the FBI on the reason for the adverse response; (2) appeal a "denied" response; or (3) provide additional information to resolve a "delayed" response. Security personnel would be required to apply directly to the FBI for these actions (*i.e.,* the licensee or certificate holder may not appeal to the FBI on behalf of the security personnel). Individuals appealing an adverse firearms background check would not be permitted access to covered weapons during the pendency of the appeal. Security personnel who receive a "denied" NICS response are presumed by ATF to be prohibited from possessing or receiving a firearm under Federal law (*see* 18 U.S.C. 922) and may not have access to covered weapons unless they have successfully appealed the "denied" NICS response and received a "proceed" NICS response. The exception to this limitation would occur during the 180-day transition period described in paragraph (b) for individuals who receive a "delayed" NICS response. To support effective use of FBI resources, timeliness requirements would be specified for individuals wishing to appeal an adverse firearms background check they believe is incorrect. An individual who fails to initiate a timely appeal or resolution request or provide information in response to an FBI request would result in the barring or abandonment of the appeal or request. Subsequent to a barring or abandonment action, a licensee or certificate holder would be permitted to resubmit the individual for a new firearms background check for any further consideration by the FBI. This resubmission would be at the discretion of the licensee or certificate holder. Finally, individuals who have successfully appealed a "denied" NICS response would be able to request that the FBI retain those records under the FBI's VAF program. Except for VAF records, the FBI purges the results of all NICS checks after 30 days (as required by the statute establishing the NICS program).

In paragraph (q), the NRC would describe how licensees and certificate holders must protect personal identification information associated with firearms background checks and NRC Forms 754, as well as the results of firearms background checks, from unauthorized disclosure. This proposed language is similar to the current regulations in § 73.57(f) regarding the protection of criminal history record check information.

*F. Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures (§ 73.46)*

In paragraph (b)(13), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees.

*G. Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage (§ 73.55)*

In paragraph (b)(12), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees.

*H. Reporting and Recording of Safeguards Events (§ 73.71)*

Overall, the NRC would revise § 73.71 to apply imminent or actual hostile action notifications to additional significant facilities (*i.e.,* Category I SSNM facilities), to significant transportation events (*i.e.,* the shipment of SNF, HLW, and Category I SSNM), and to significant cyber attacks on power reactors. Additionally, the NRC would revise § 73.71 to accomplish the following: (1) Add regulatory clarity; (2) improve the structure through increased parallelism between facility and transportation notifications; and (3) add notifications for stolen or lost enhanced weapons and adverse ATF inspection findings.

In paragraph (a), the NRC would require licensees and certificate holders for power reactor facilities and Category I SSNM facilities to notify the NRC within 15-minutes of discovery of an imminent or actual hostile action or the initiation of a security response in accordance with the licensee's or certificate holder's safeguards contingency plan due to an imminent or actual hostile action. The NRC would describe the abbreviated set of information to be initially provided to the NRC. The NRC recognizes that licensees and certificate holders would be very busy in these circumstances and requires a minimal set of information to execute the NRC's strategic communication responsibilities. Additionally, the NRC would recognize that the licensee or certificate holder should make requests for immediate assistance from a local law enforcement agency (LLEA) before notifying the NRC. Finally, the NRC would relocate the language to not require licensee notifications to the NRC regarding an increase in its security posture which was made in response to an NRC communication from original proposed Appendix G to part 73, paragraph I(b) to this revised paragraph. This relocation would reduce duplication of requirements and continue the proposed elimination of unnecessary notifications.

In paragraph (b), the NRC would require similar 15-minute notifications for certain transportation events. This would apply to an imminent or actual hostile action or the initiation of a security response in accordance with the licensee's or certificate holder's safeguards contingency plan, due to an imminent or actual hostile action against shipments of SNF, HLW, and Category I SSNM. A similar abbreviated set of information would be initially provided to the NRC for these transportation events and similar redundancy language would be included. The NRC would recognize that the licensee or certificate holder should request immediate assistance from LLEA before notifying the NRC.

In paragraph (c), the NRC would require one-hour notifications from licensees or certificate holders for facility-based events listed in revised proposed paragraph I to Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. Notifications made under revised proposed paragraph (a) for imminent or actual hostile acts against facilities would not be required to be repeated under this paragraph.

In paragraph (d), the NRC would require one-hour notifications from licensees or certificate holders for transportation-based events listed in revised proposed paragraph I to Appendix G to part 73. This would affect licensees' and certificate holders' activities involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. Notifications made under proposed paragraph (b) for imminent or actual hostile acts against shipments would not be required to be repeated under this paragraph.

In paragraph (e), the NRC would require four-hour notifications from licensees or certificate holders for facility-based events listed in revised proposed paragraph II to Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities.

In paragraph (f), the NRC would require eight-hour notifications from licensees or certificate holders for facilities-based events listed in revised proposed paragraph III to Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities.

In paragraph (g), the NRC would require one-hour or four-hour notifications by licensees or certificate holders (*i.e.,* power reactor licensees and Category I SSNM licensees) who possess enhanced weapons under section 161A of the AEA, and discover that these weapons are stolen or lost. The one-hour notification would result from weapons that are discovered to be stolen or lost from inside of a PA, VA, MAA, or CAA. The four-hour notification would result from weapons that are discovered to be stolen or lost from outside of a PA, VA, MAA, or CAA. The shorter notification is based upon the potential for weapons lost or stolen inside a PA, VA, MAA, or CAA to affect the security of the facility (*i.e.,* an insider threat issue). The timing of a four-hour notification would start from the licensee's notification to ATF. The NRC notes that licensees and certificate holders possessing enhanced weapons have an independent responsibility under ATF's regulations to immediately upon discovery report such stolen or lost enhanced weapons to ATF (*see* 27 CFR 479.141). Additionally, the NRC would require such licensees and certificate holders to notify local law enforcement as soon as possible, but no later than 48 hours after discovery of stolen or lost enhanced weapons. The 48 hour requirement is consistent with current ATF requirements for notifying local law enforcement of stolen or lost weapons.

In paragraph (h), the NRC would require a 24-hour notification from licensees or certificate holders who meet the following criteria: (1) They possess enhanced weapons per section 161A of the AEA; (2) they receive an adverse inspection or enforcement finding from ATF regarding any enhanced weapons possessed, received, stored, or transferred by the licensee or the certificate holder; or (3) they receive an adverse inspection or enforcement finding regarding a Federal firearms license held by the NRC-licensee or certificate holder. Paragraph (i) would be reserved to avoid confusion.

In paragraph (j), the NRC would describe the notification process for telephonic notifications required under paragraphs (a) through (h). The

applicability of the exception for exigent or emergency safeguards communications would be continued using the cross reference to the Protection of Safeguards Information final rule (October 24, 2008; 73 FR 63545). A provision would be added to address classified notifications under this section from licensees or certificate holders with classified security plans. Clarification would be provided as to when licensees or certificate holders need to able to respond to NRC requests to establish a continuous communication channel following a 15-minute notification that provides for the following: (1) The completion of other critical tasks (*e.g.,* declaration of an emergency or contacting local law enforcement); and (2) communicator staff requirements (*i.e.,* the use of knowledgeable security, operations, or emergency response personnel from a location of the licensee's or certificate holder's discretion).

In paragraph (k), the NRC would require that a safeguards event log be maintained for the events described in paragraph IV of Appendix G to part 73. This would affect licensees and certificate holders of fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. This would affect licensees' and certificate holders' activities involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. Events recorded in the safeguards log must be entered within 24 hours of discovery and retained until 3 years after the last entry in each log or termination of the license or certificate of compliance.

Paragraph (l) would be reserved to avoid confusion.

In paragraph (m), the NRC would describe the form and content of written follow-up reports following telephonic notifications required by § 73.71(a) through (g). The NRC also would provide new language to obviate the requirement for a written follow-up report if the licensee or certificate holder retracts the initial telephonic notification. However, if a written follow-up report has already been submitted, then licensees and certificate holders would be required to submit a revised written report to ensure that the NRC's official records are correct.

In paragraph (n), the NRC would clarify that notifications made under the declaration of an emergency are covered under other regulations in 10 CFR chapter 1 applicable to the license or certificate of compliance.

In paragraph (o), the NRC would provide for the elimination of duplicate notifications or records under this section relative to other event notifications required under 10 CFR chapter 1 (*i.e.,* a single report or record may be made that lists all of the applicable reporting or recording requirements)

*I. Criminal Penalties (§ 73.81)*

The NRC would not make any conforming changes to § 73.81(b), "Criminal Penalties," due to the addition of new §§ 73.18 and 73.19 to part 73. Consequently, willful violations of §§ 73.18 and 73.19 may be subject to criminal penalties. Therefore, proposed §§ 73.18 and 73.19 would not be included in the list of sections from part 73 contained in § 73.81(b). *See* Section VII, "Criminal Penalties," of this document for further information.

*J. U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses (Appendix A to Part 73)*

The NRC would make administrative, conforming, and editorial changes to Appendix A to part 73. The NRC is proposing to make administrative changes in Table 1, including: updating the main (nonsecure) e-mail address, adding a secure e-mail address, and removing previously used telephone number for the NRC Headquarters Operations Center. Editorial changes would be made to the titles of Tables 1 and 2 to refer to the table number to improve clarity. Finally, new paragraphs III and IV would be added to Appendix A to part 73 as conforming changes to provide direction to licensees and certificate holders regarding classified telephone calls and sending classified e-mails to the NRC for classified event notifications under § 73.71.

*K. General Criteria for Security Personnel (Appendix B to Part 73)*

In section I.A, the NRC would make a conforming change to update the employment suitability language to reflect the statutory requirements for possession of firearms under 18 U.S.C. 922. This would be consistent with the recently added language in Section VII.B, "Criminal Penalties," of this document.

*L. Reportable and Recordable Safeguard Events (Appendix G to Part 73)*

The NRC is proposing additional conforming and corrective changes to Appendix G to part 73, from the language presented in the October 2006 proposed rule. The introductory text and paragraph I would be revised to include Category I SSNM facilities. The requirements for 15-minute notifications (in the October 2006 proposed Appendix G to part 73) in paragraph I would be relocated to § 73.71 and paragraphs II and III would be redesignated as paragraphs I and II, respectively. New paragraph III would be added to address unauthorized operation or tampering events that do not impact the operation of the facility. Paragraph IV would remain to address recordable events. Information on the applicability of the NRC's proposed security event notification (both reporting and recording requirements) specified under in Appendix G to individual classes of NRC-regulated facilities and activities is described in § 73.71. *See also* Section V.H above.

In paragraph I, the NRC would describe the types of facility-based and transportation-based security events that would require a one-hour notification per § 73.71. These events would include the following: (1) Committed acts and attempted acts; (2) threats to commit certain acts involving theft or diversion of SNM; (3) significant physical damage to a facility or shipment; (4) unauthorized operation, mispositioning, or tampering with controls or SSCs that results in the interruption in the normal operation of a facility; (5) unauthorized entry of personnel into a PA, VA, MAA, or CAA, or transport; (6) malevolent attempted entry of personnel into a PA, VA, MAA, CAA, or transport vehicle or transported material; (7) actual or attempted entry of contraband into a PA, VA, MAA, CAA, or transport vehicle or transported material; (8) actual or attempted introduction of explosives or incendiaries beyond a vehicle barrier system; (9) an uncompensated vulnerability, failure, or degradation of security systems that could allow unauthorized access of personnel or contraband; (10) a lost shipment of Category I SSNM, Category II or III SNM, SNF, or HLW; or (11) the recovery or accounting for a lost shipment. Modifying language referring to "credible" threats would be removed. (The NRC views the determination of whether a threat is credible or not appropriately rests with government officials, such as the NRC, the intelligence community, or an LLEA; rather than with the licensee or certificate holder.) Additionally, the NRC would require one-hour notifications from nuclear power facilities of the determination of an actual cyber attack or if there is reason to believe that a cyber attack has

occurred or has been attempted on systems, networks, or equipment within the scope of § 73.54 or against security measures that protect those networks or equipment.

In paragraph II, the NRC would describe types of facility-based events that would require a four-hour notification per § 73.71. These events would include suspicious activities involving the following: (1) Potential attempted surveillance, reconnaissance, intelligence-gathering acts against the facility; (2) challenges to security control systems and processes; (3) unauthorized operation, mispositioning, or tampering with controls or SSCs that does not result in the interruption of the normal operation of the facility; (4) notification of law enforcement officials in accordance with the licensee's or certificate holder's security program (that does not otherwise require a notification under the other provisions of Appendix G to part 73); or (5) a law enforcement response to the facility which could reasonably be expected to result in public or media inquires (that does not otherwise require a notification under the other provisions of Appendix G to part 73). However, this would not include commercial or military aircraft activity over or close to the facility that is considered routine or non-threatening by the licensee or certificate holder. Additional information on follow-up communications with the NRC's Information Assessment Team regarding suspicious event notifications also would be provided.

Additionally, the NRC would require four-hour notifications from nuclear power facilities if licensee obtains or gathers information that indicates tampering, unauthorized access, use or modifications, or unauthorized gathering of information or data of systems has occurred or is occurring on networks, or equipment within the scope of § 73.54 or to the security measures that protect these safety, security, or emergency preparedness functions of nuclear power facilities are degraded.

In paragraph III, the NRC would describe types of facility-based events that would require an eight-hour notification per § 73.71. These events would include unauthorized operation, mispositioning, or tampering with controls or SSCs that that could prevent the implementation of the licensee's or certificate holder's protective strategy for protecting any target set. Additionally, the NRC would require eight-hour notifications from nuclear power reactor facilities if a licensee detects an unauthorized operation or manipulation of, or tampering with networks, or equipment within the scope of § 73.54 or the security measures that protect such networks and equipment, but such actions did not interrupt or degrade the nuclear power reactor facility's safety, security, or emergency preparedness functions.

In paragraph IV, the NRC would describe types of facility-based and transportation-based events that would require an entry in the safeguards event log per § 73.71. These events would include a compensated vulnerability, failure, or degradation of security systems that except for the compensatory actions could have allowed unauthorized access of personnel or contraband beyond a vehicle barrier or into a PA, VA, MAA, CAA, or transport; of a threatened, committed, or attempted act that would degrade the licensee's or certificate holder's committed physical protection program. Additionally, these events include (1) any other threatened, attempted, or committed act not previously defined in Appendix G that has resulted in or has the potential for decreasing the effectiveness of the security program including cyber security program or (2) any failure, degradation, or the discovered vulnerability in a security measure, system, component had compensatory measures not been established or employed, that could degrade the effectiveness of protecting any systems, networks, or equipment described in § 73.54. The NRC also would indicate that events that are reported as telephonic notifications do not require an entry in the safeguards event log.

*M. Armed Security Personnel Background Check (NRC Form 754)*

The NRC is proposing editorial changes to NRC Form 754 to increase clarity in the assisting notes and explanatory text. These changes would be consistent with the August 2008 version of similar ATF Form 4473. The NRC is also proposing a change to Question 4 to NRC Form 754 to (1) eliminate the address of a security individual's duty station and only specify the applicable State or Territory; and (2) permit the inclusion of multiple States or Territories where the individual routinely conducts official duties requiring access to covered weapons at multiple duty station locations or escorts shipments of radioactive material or other property across multiple States. The NRC is also proposing to delete Question 13 (State of Residence), since this question is now redundant with the information requested in Question 3 (Current Residence Address). Accordingly, Questions 14 through 18 would be redesignated as Questions 13 through 17, respectively. The NRC is also proposing to revise paragraph 4 of the Privacy Act Information summary (on page 3 of the form) to indicate that the submission of information on NRC Form 754 would be mandatory for certain security personnel at NRC-regulated facilities.

**VI. Guidance**

The NRC is preparing a new draft regulatory guide (DG–5020) (NRC–2011–0015) that will contain detailed guidance on the implementation of the proposed requirements on applying for enhanced weapons and conducting firearms background checks. The draft regulatory guide will be made available for public comment. The NRC will issue a final regulatory guide subsequent to the publication of a final rule. The NRC also has developed a guidance document to assist licensees and certificate holders in completing the weapons safety assessment required as part of an application for enhanced weapons under § 73.18 (NRC–2011–0017).

The NRC developed a draft regulatory guide (DG–5019) (NRC–2011–0014) on event notifications that contained detailed guidance on the implementation of the changes in the October 2006 proposed rule to § 73.71 and Appendix G to part 73. The NRC published draft regulatory guide DG–5019 for public comment on July 6, 2007 (72 FR 37058). The NRC also held a public meeting to discuss the draft regulatory guide on July 27, 2007. However, the NRC has made substantive changes to DG–5019 to reflect the new notification requirements for stolen or lost enhanced weapons and the further changes to § 73.71 and Appendix G to part 73 discussed in this proposed rule. Because of the scope of these proposed changes to the event notification regulations, the NRC intends to issue a Revision 1 to DG–5019 for further public comment and will hold an additional public meeting to discuss Revision 1 to DG–5019. The NRC will issue a final regulatory guide (Revision 2 to RG 5.62) subsequent to the publication of a final rule.

The NRC has determined that public and stakeholder access to these draft guidance documents is not necessary to provide informed comments on this proposed rule.

**VII. Criminal Penalties**

For the purposes of Section 223 of the Atomic Energy Act of 1954 (AEA), as amended, the Commission is proposing to amend 10 CFR part 73 under Sections

161b, 161i, or 161o of the AEA. Criminal penalties, as they apply to regulations in part 73, are discussed in § 73.81. The new §§ 73.18 and 73.19 are issued under Sections 161b, 161i, or 161o of the AEA. Violations of these new sections are subject to possible criminal penalties; and therefore they are not included in § 73.81(b).

**VIII. Compatibility of Agreement State Regulations**

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility Category "NRC"; and new §§ 73.18 and 73.19 are designated as Category "NRC" regulations. Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the 10 CFR, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

**IX. Availability of Documents**

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agency Wide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

*Federal rulemaking Web site:* Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0018.

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated

| Document | PDR | Web | ERR (ADAMS) |
|---|---|---|---|
| Firearms Guidelines | X | X | ML082560848 |
| Environmental Assessment (October 2006 proposed rule) | X | X | ML061920093 |
| Regulatory Analysis | X | X | ML061380803 |
| Regulatory Analysis—appendices (October 2006 proposed rule) | | | ML061380796<br>ML061440013 |
| Information Collection Analysis | X | X | ML092640277 |
| NRC Form 754 | X | X | ML092650459 |
| Commission: SECY–08–0050 (April 17, 2008) | X | X | ML072920478 |
| Commission: SECY–08–0050A (July 8, 2008) | X | X | ML081910207 |
| Commission: SRM–SECY–08–0050/0050A (August 15, 2008) | X | X | ML082280364 |
| Letter opinion from ATF's Office of Enforcement on the transfer of enhanced weapons (January 5, 2009) | X | X | ML090080191 |

**X. Plain Language**

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883), in the **Federal Register**. In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC has used the phrase "may not" throughout this proposed rule to indicate that a person or entity is prohibited from taking a specific action. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption.

**XI. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to use standards from applicable firearms standards developed by nationally-recognized firearms organizations or standard setting bodies or from standards developed by Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense. The NRC invites comment on the applicability and use of these and other standards.

As discussed in Section VI, "Guidance," of this document, the NRC also intends to issue for public comment draft Regulatory Guides DG–5019 (NRC–2011–0014) and DG–5020 (NRC–20011–0015) that would provide implementing information to licensees and certificate holders. DG–5020 would include references to U.S. government manuals that have been developed for the training and deployment of machine guns.

The NRC has determined that public and stakeholder access to these draft guidance documents is not necessary to provide informed comments on this proposed rule.

**XII. Finding of No Significant Environmental Impact**

In the proposed rule published on October 26, 2006, the Commission determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of the environmental assessment in this proposed rule is that there will be no significant offsite impact to the public from this action. Availability of the environmental assessment is provided in Section IX, "Availability of Documents," of this document.

Accordingly, because of the nature of the changes to the firearms background checks and enhanced weapons provisions presented in this proposed rule, the assumptions in the October 2006 proposed rule are not changed so the Commission is not seeking additional comments on the environmental assessment.

The NRC sent a copy of the environmental assessment and the October 26, 2006, proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

**XIII. Paperwork Reduction Act Statement**

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

1. *Type of submission, new or revision:* Revision and new.

2. *The title of the information collection:* 10 CFR part 73, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications" proposed rule, and NRC Form 754, "Armed Security Personnel Background Check."

3. *The form number, if applicable:* NRC Form 754.

4. *How often the collection is required:* One time for power reactor licensees and Category I SSNM licensees applying for combined enhanced weapons authority. Initial submissions of NRC Form 754 will be required for all of their security personnel whose duties require access to covered weapons; thereafter, recurring firearms background checks and completion of NRC Form 754 will be required once every three years. New records requirements are imposed to document enhanced weapon inventory requirements, monthly and semiannually. As needed, licensees will report removals of security personnel, discovery of a stolen or lost enhanced weapon, and security events. For certain security events, follow-up reports are required within 60 days.

5. *Who will be required or asked to report:* The proposed NRC Form 754 and event notification changes affect operating nuclear power reactors located at 65 sites, 15 decommissioning power reactor sites, and 2 fuel cycle facilities authorized to possess Category I SSNM. Security event notifications under different sections of § 73.71 could also affect 42 research and test reactor (RTR) sites, 6 Category II and II SNM sites, 60 Independent Spent Fuel Storage Installation (ISFSI) sites, 2 hot cell sites, and 3 other reactor sites. Security personnel must report to their management any event disqualifying them from possessing enhanced weapons.

6. *An estimate of the number of annual responses:* 16,685 responses [10 CFR part 73: 7,966 (7,771 response plus 195 recordkeepers); NRC Form 754: 8,719 (8,637 responses plus 82 recordkeepers)].

7. *The estimated number of annual respondents:* 206 (65 sites power reactor sites, 15 decommissioning power reactor sites, 2 fuel cycle facilities, 42 research and test reactors sites, 6 Category II and II SNM sites, 60 Independent Spent Fuel Storage Installation sties, 2 hot cell sites, 3 other reactor sites, plus 11 third party security personnel respondents).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 161,884 hours [10 CFR part 73: 150,459 (130,113 reporting hours plus 20,299 recordkeeping hours plus 47 third party notifications); NRC Form 754: 11,425 hours (8,637 reporting hours plus 2,788 recordkeeping hours)].

*Abstract:* The NRC is proposing to amend the current security regulations and add new security requirements pertaining to nuclear power reactors and Category I SSNM facilities for access to enhanced weapons and firearms background checks. The proposed rulemaking would fulfill certain provisions of the Energy Policy Act of 2005 and add several new requirements to event notification requirements that resulted from insights from implementation of the security orders, review of site security plans, and implementation of the enhanced baseline inspection program and force-on-force exercises.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Estimate of burden?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC PDR, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 30 days after the signature date of this document. These documents are also available at: *http://www.regulations.gov* under Docket ID (NRC–2011–0018). Documents may be viewed and downloaded electronically.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by March 7, 2011 to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *Infocollects.Resource@NRC.GOV* and to the Desk Officer, Ms. Christine Kymm, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0002 and 3150–0204), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via *http://www.regulations.gov,* Docket ID NRC–2011–0018. Comments received after this date will be considered if it is practical to do so, but assurance cannot be given to comments received after this date. You may also e-mail comments to *Christine_J._Kymm@omb.eop.gov* or comment by telephone at 202–395–4638.

*Public Protection Notification*

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

**XIV. Regulatory Analysis**

The NRC had prepared a draft regulatory analysis for the original proposed rule published on October 26, 2006 (*see* Section IX, "Availability of Documents," of this document). The analysis examined the costs and benefits of the Implementation of section 161A of the AEA, proposed by the NRC at that time. Given that the NRC is required to comply with this statute, the regulatory analysis is provided in this case more for informational purposes rather than as a tool for decision-makers, which is its customary role.

The NRC is now taking action to conform implementing regulations to the firearms guidelines issued by the Commission, with the approval of the

U.S. Attorney General. Many of the requirements identified in this revised proposed rule were identified in the original proposed rule. However, for the sake of completeness in this regulatory analysis, the staff is providing cost and benefit estimates for the proposed changes to §§ 73.18, 73.19, and 73.71 and Appendices A and G to part 73. The NRC considers the costs and benefits associated with applying for enhanced weapons to be unchanged from that described in the draft regulatory analysis, as the plans and analysis that are required to accompany an application have not changed. However, additional requirements have been added to the proposed § 73.18 that involve recordkeeping or reporting burdens. These include: Periodic inventories of enhanced weapons under paragraph (n), notifications to the NRC and local law enforcement of stolen or lost enhanced weapons under paragraph (o), and record keepings under paragraph (p). These proposed regulations are required to be consistent with the issued firearms guidelines. Additionally, the proposed regulation would require a licensee or certificate holder to notify the NRC of a licensee's or certificate holder's receipt of adverse ATF findings under paragraph (j). This notification would permit the NRC to effectively respond to any public or press inquires related to the adverse ATF findings at NRC licensees possessing enhanced weapons. Additional recordkeeping and reporting burdens have also been added to § 73.19 that include periodic firearms background checks under paragraph (f). Finally, additional recordkeeping and reporting burdens have been added to the proposed changes to § 73.71 and Appendix G. These include imminent or actual hostile acts under paragraphs (a) and (b), suspicious activities under paragraph II, and cyber events under paragraphs I, II, and III. This regulatory analysis was developed following the guidance contained in NUREG/BR–0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, issued September 2004.

*1. Statement of the Problem and Objective*

The information generally contained in this portion of the regulatory analysis may be found earlier in this document in Sections II, "Background," and III, "Discussion."

*2. Identification and Analysis of Alternative Approaches to the Problem*

Because this rulemaking is in response to the statutorily mandated provisions of the new section 161A of the AEA and the direction provided by the firearms guidelines issued by the Commission, with the approval of the U.S. Attorney General (*see* 74 FR 46800; September 11, 2009), there are no acceptable alternatives to the proposed rulemaking. Licensee application for enhanced weapons authority and preemption authority under section 161A is voluntary; however, licensee compliance with the firearms background checks under section 161A is mandatory for certain designated classes of licensees. Consequently, the no-action option is used only as a basis against which to measure the costs and benefits of the proposed rule.

*3. Estimation and Evaluation of Values and Impacts*

In general the parties that would be affected by this proposed rule are the licensees (there is no impact on applicants since they are not subject to the firearms background check requirements), the NRC, the public surrounding the plants, the on-site employees of the licensees, the FBI, and the ATF.

The following attributes are expected to be affected by this rulemaking. Their impacts are quantified where possible. Impacts to accident-related attributes are qualified because estimates of occurrences of possible attacks and their successful repulsions are unknown. Further, even if reliable estimates were available, they would be considered Safeguards Information and not to be released for public dissemination.

• *Safeguards and Security Considerations*—The proposed actions regarding access to enhanced weapons and mandatory firearms background checks will provide high assurance that the common defense and security will be enhanced because of licensees' increased ability to repulse an attack and to comply with statutory requirements.

The proposed actions regarding security event notifications will increase the NRC's ability to respond to security events and to effectively monitor ongoing licensee actions and inform other licensees in a timely manner of security-significant events and thus protect public health and safety and the common defense and security.

• *Industry Implementation*—The proposed rule would require licensees and certificate holders to subject their security personnel to a finger-print based background check and a firearms background check against the NICS. Requirements on security event notifications were also updated. Also, the rule would give licensees in Commission-designated classes of facilities the option to apply for combined enhanced weapons authority and preemption authority or standalone preemption authority. If a licensee is so inclined, it must submit plans and analysis to the NRC on their proposed deployment of enhanced weapons. The NRC must then act on approving the request or not. Following NRC approval, such a licensee would apply to ATF to transfer the authorized enhanced weapons to its facility. Industry would, of course, need to develop procedures to comply with these requirements.

For purposes of analysis, the NRC staff assumes that all licensees who fall within the proposed designated classes would take advantage of making use of enhanced weapons protection (*i.e.,* 65 operating power reactor sites, 15 decommissioning power reactor sites, and 2 Category I SSNM facilities for a total of 82 facilities). The staff also assumes that it would take an individual site one-half staff year to develop the changes to the security, training and qualification, contingency response plans and security event notification reports and to develop the weapons safety assessment and submit these documents to the NRC for its review and approval. Next, the staff assumes that it would take an individual site one-quarter staff year to complete ATF paperwork, acquire the enhanced weapons, develop new training standards and then train security personnel, and deploy the weapons. The staff further assumes a weapons acquisition cost of $1000 per weapon for 50 weapons equaling $50,000 per individual site. The staff uses a value of $160,000 per staff year. Therefore, the staff estimates that an individual site's implementation cost for the voluntary enhanced weapons regulations would be sum of the values of: the half staff-year, the quarter staff-year, and the cost of the weapons or $170,000 ($80,000 + $40,000 + $50,000); and a total enhanced-weapons' implementation cost of $13,940,000 for the industry.[3] Note: this cost analysis does not include any transfer tax payments required from a licensee to register an enhanced weapon with ATF under the National Firearms Act (26 U.S.C. chapter 53), since those costs fall under ATF's sole regulatory purview.

NRC staff estimates that the costs to establish the program for accomplishing the mandatory firearms background checks would require two staff months per individual licensed facility. Therefore, the staff estimates that an

[3] Please note that throughout this paper sums may not equal shown total values because of rounding.

individual site's costs (excluding fees) for this task would be $26,700; and a total cost of $2,190,000 for the industry.

NRC staff estimates that the total fees for the mandatory firearms background checks including the NICS check and the fingerprint check would be $26. The NRC staff also assumes that the completion of, and recordkeeping for each NRC form 754 for mandatory background checks would be equivalent to one staff-hour. The NRC staff assumes 150 security officers per operating reactor and Category I SSNM facility and 75 officers for each decommissioning reactor and an hourly rate for industry security personnel of $50.

This results in costs of $11,400 for each operating reactor and Category I SSNM facility and $5,700 for a decommissioning reactor site. This sums to total industry costs of $741,000 for all operating reactors and $22,800 for the two Category I SSNM facilities, and a decommissioning reactor industry cost of $85,500. Therefore, the overall total industry cost estimate for performing the first-time background checks is $849,000.

When summed, the total implementation costs for obtaining enhanced weapons, establishing the program for accomplishing the mandatory firearms background checks, and completing the firearms background checks for an individual site range from $202,000 for the decommissioning sites to $208,000 for the operating reactor and Category I SSNM sites. The total industry implementation costs for operating reactors is $13,526,000; for Category I SSNM sites $416,000; and for decommissioning sites $3,036,000. The sum of the total industry implementation cost is $16,979,000.

• *Industry Operation*—Enhanced weapon Inventories' requirements of the proposed rule, both monthly and semi-annually would result in operating expenses for industry. The NRC staff estimates that the automatic weapons inventories would take a total of 1 staff day for the monthly inventories and a total of 2 staff days for the semi-annual inventories, for the two-person inventory team. A licensee does not have to do the monthly inventory (these are inventories not inspections) if they are doing the semi-annual check that month. Assuming an hourly rate for industry security personnel of $50, the NRC staff estimates that this requirement would result in an annual cost per site of $5,600 (*i.e.,* $50/hr × [(8hrs/monthly-inventory × 10 monthly-inventories/yr) + (16hrs/semi-ann-inventory × 2 semi-ann-inventory/yr)]). Assuming all 65 operating power reactor sites, 15 decommissioning reactor sites, and two Category I SSNM facilities decide to obtain enhanced weapons, this results in an industry annual cost of approximately $460,000. Based on the extended license expiration dates, the NRC staff assumes the average remaining life of operating reactors is 34 years. We also assume another 20 years in "SAFSTOR" for a total of 54 years additional years. For the 15 decommissioning reactors we assume an additional 20 years of life. Lastly, we assume an additional 50 years of life for the 2 Category I SSNM licensees. By type of licensee, the net present value (presented as individual cost/industry cost) using a 7 percent real discount rate are $72,000/$5,100,000 for operating reactors; $59,000/$890,000 for decommissioning reactors; and $77,000/$154,000 for Category I SSNM facilities. The corresponding values using a 3 percent real discount rate is calculated to be $149,000 per operating reactor or $9,674,000 for all 65 reactors; $83,000 for each decommissioning reactor or $1,250,000 for all 15 sites; and $144,100 for each of the two Category I SSNM facilities or $288,174 for their total. Therefore, the total industry operating costs for the inventory requirements is the sum of the discounted flow of funds costs which is approximately $6.1 million using a 7 percent rate and $11.2 million using a 3 percent real rate.

Also, the licensees need to comply with the mandatory recurring background checks. As mentioned in the Industry Implementation section above, the NRC staff estimates a one-time background-check cost of $11,400 per operating reactor. Recurring firearms background checks every 3 years would approximate an annualized cost of $3,800. Discounted over the assumed 34 remaining years of life of an operating reactor results in discounted flow values of $48,800 (7 percent) and $80,300 (3 percent). The NRC staff then assumed the operating reactors would have 20 years of life remaining as decommissioning reactors. At decommissioning reactors the calculated cost would be $5,700 per site, or $1,900 per year. This value discounted over the future years 35 through 54 at a decommissioning site would be $1,840 (7 percent) and $9,670 (3 percent). Therefore, the total cost of background checks for a presently operating reactor is $50,680 (7 percent) and $90,000 (3 percent). This corresponds to values for all operating reactors of $3,294,000 (7 percent) and $5,848,000 (3 percent).

The discounted flow of funds value for background checks (assuming the $3,800 annualized cost) for the individual Category I SSNM licensees is $52,400 using the 7 percent rate and $97,800 using the 3 percent discount rate. This corresponds to the Category I SSNM industry total of $104,900 (7 percent) and $195,500 (3 percent).

Lastly, the discounted cost estimates for background checks for a decommissioning reactor are $20,100 (7 percent) and $28,300 (3 percent). Total costs for all present decommissioning reactors are $301,900 (7 percent) and $424,000 (3 percent).

The total discounted flow of funds for the industry to have the background checks performed is $3,401,000 ($3,294,000+$104,900+$301,900) using a 7 percent real discount rate. Using a 3 percent real discount rate provides a total industry cost of $6,468,000 ($5,848,000+$196,000+$424,000).

With respect to the security event notification reporting requirements, this analysis presents combined cost estimates for both physical and cyber events for: Imminent or actual hostile action notifications, cyber and physical intrusions, suspicious activity notifications, unauthorized operation or tampering events (including cyber systems), and security logable events.

The NRC staff estimates that for 65 operating reactor sites, 15 decommissioning sites, and 2 Category I SSNM sites, each facility would make one imminent or actual hostile act notification every 10 years. This equates to a site-risk value of 0.1 per year. Further, the staff estimates that the proposed required initial communication with the NRC would take approximately 6 minutes, or 0.1 hours. The 2 hour open-line continuous communication channel requirement is, of course, assumed to take 2 staff-hours of time. Therefore, the annual cost per site may be expressed as 0.1/yr × [0.1hrs + 2hrs] = 0.21hrs/year. At the assumed professional level wage rate of $100/hr, this results in an annual cost of $21 per site.

For the operating reactors, the annual industry cost is $1,365, for decommissioning reactors it is $315, and only $42 for the Category I SSNM facilities. When the annual costs are discounted over the average remaining lives of the various sites, the totals for operating reactors range from $19,000 (7 percent real discount rate) to $36,000 (3 percent). For decommissioning reactors, the values range from $3,300 (7 percent) to $4,700 (3 percent). For the two Category I facilities, the discounted flows of funds for the annual operating costs range from $600 (7 percent) to $1,000 (3 percent). Therefore, the total operating expenses for the imminent attack notification component of the

rule range from $22,900 (7 percent) to $41,700 (3 percent).

For cyber and physical intrusions, the NRC staff assumes the following sites will be affected: (1) 82 operating, decommissioning, and Category I SSNM sites, (2) 42 operating and decommissioning research and test reactor (RTR) sites, (3) 3 other reactor sites, (4) 6 Category II and Category III Special Nuclear Material Sites (SNM), (5) 60 Independent Spent Fuel Storage Installations (ISFSI), and (6) 2 hot cell sites. This results in 195 affected licenses. The intrusions, which require a one hour notification time, are assumed by the NRC staff to occur on average once every 2 years, or at a rate of 0.5 per year. Further, the staff assumes that each event would require one hour of licensee staff time per event. Given the assumed professional level wage rate of $100/hr, this results in an annual cost of $50 per site. The discounted cost over the assumed life of an operating reactor and its additional time in SAFESTOR ranges from $700 (7 percent real discount rate) to $1300 (3 percent).

The total industry costs are composed of the following. Operating reactors total cost estimates range from $45,000 (7 percent) to $86,000 (3 percent). The Decommissioning Reactors range from $7,900 to $11,100. Category I's range from approximately $1,400 to $2,600. RTRs range from $28,000 to $48,000. Other sites estimates are $2,000 to $3,500. The Category II and III sites range from $4,000 to $6,900. The 2 Hot Cell sites estimated costs are from $1,300 to $2,300. The ISFSI's costs are estimated to range from $43,000 to $91,000. This results in an estimate for the total industry operating costs of from $132,000 (7 percent) to $252,000 (3 percent).

For suspicious activity reports, the NRC staff assumes five reports per year, for each of the 195 licenses, which we assume would result in a 1 hour total response per report. This results in annual costs per site of $500. For operating reactors (including their time in SAFESTOR), the total costs range from $452,000 (7 percent) to $864,000 (3 percent). Decommissioned reactors corresponding estimates run from $79,400 to $112,000. The 2 Category I SSNMs cost estimates range from $13,800 to $25,700, again showing the 7 percent value first, followed by the 3 percent estimate. The 42 Research and Test Reactors had industry total cost estimates of $280,000 to $485,000. The 3 other sites values were $20,000 to $34,700. The 6 Category II and III SNMs had approximately double those values at $40,000 to $69,300. The 2 hot cell sites incurred costs of $13,300 to $23,100. Lastly, the ISFSIs estimates ran from $427,000 to $906,000. The summed estimate for suspicious activity reports runs from $1,325,000 (7 percent) to $2,520,000 (3 percent).

With respect to unauthorized operation or tampering events, the NRC staff assumes one event per year, per site, (for both physical and cyber events) and a 1 hour total response per event resulting in annual costs of $100 per site. Operating Reactors total cost estimates range from $90,400 (7 percent) to $173,000 (3 percent). Similar estimates for the decommissioning reactors range from $15,900 to $23,300. The Category I SSNMs were $2,800 to $5,100. Research and Test Reactors had estimates from $56,000 to $97,000. The 3 other sites' values ranged from $4,000 to $6,900. Category II and III SNM sites incurred estimates of $8,000 to $13,900. The hot cell sites ranged from $2,700 to $4,600. ISFSIs ranged from $85,300 to $181,200. Therefore the total industry operating expenses for unauthorized operation or tampering ranges from $265,000 (7 percent) to $504,000 (3 percent).

For both requirements relating to enhanced weapons being lost or stolen and to adverse ATF findings, the NRC staff assumes an occurrence of once every 2 years or at a rate of 0.5 per year at the 82 sites. While these requirements differ as to time required to submit the report, all are assumed to require an hour of licensee staff time per event. Again, $100 per staff-hour is assumed as the wage rate that results in an annual cost of $50 per site. The resulting discounted cost over the assumed life of an operating reactor ranges from $700 (7 percent real discount rate) to $1,300 (3 percent). For all 65 reactors that becomes $45,200 to $86,400. The corresponding values for the 15 decommissioning reactors range from $8,000 to $11,100. Lastly, the 2 Category I sites related values are $1,400 and $2,600. Therefore, these sum to ranges of $54,600 (7 percent) to $100,000 (3 percent).

Finally, the NRC staff estimates the impact of the events requiring entry in the safeguards event log at 195 sites. The NRC staff assumes 150 events requiring entry in the log per site, per year and that each entry requires 20 minutes of licensee staff time. Therefore, the annual cost per site is $5,000 and $975,000 for the industry. Total costs resulting from this requirement are estimated to be from $13,250,000 (7 percent real discount rate) to $25,200,000 (3 percent rate). This is based on the sum of the following components. Operating reactors have estimated costs that range from $4,520,000 to $8,640,000. Decommissioning Reactors have estimates going from $794,000 to $1,120,000. The 2 Category I sites' costs for this paragraph go from $138,000 to $257,000. RTRs have estimates of from $2,800,000 to $4,800,000. Other reactor sites run from $200,000 to $347,000. The Category II and III sites have estimates of $400,000 to $693,000. The Hot Cell Sites account for $133,000 to $231,000, while the ISFSI sites have estimates of $4,270,000 to $9,060,000.

The NRC notes that Appendix G to part 73 imposes no additional (or separate) requirements on licensees. It only contains a detailed listing of the security event notifications that are required to be reported under § 73.71. As a result, no separate costs would be incurred by licensees because of the requirements of Appendix G (*i.e.,* the costs for event notifications specified under Appendix G are accounted for under the costs associated with § 73.71).

The notification requirements' discounted flow of funds costs for the industry sum to from $15,056,000 (7 percent) to $28,613,000 (3 percent).

The total industry operating costs are the sum of the recurring inventory requirements ($6.1 million given the 7 percent real discount rate and $11.2 million with the 3 percent rate), the background checks ($3.7 million at 7 percent and $6.5 million at 3 percent), and the security event notification reports ($15.1 million using the 7 percent rate and $28.6 million with the 3 percent rate). This total is estimated to range from $24.9 million (7 percent) to $46.3 million (3 percent rate).

• *NRC Implementation*—NRC implementation costs include the labor cost for the development of the final rule and the regulatory guidance (two regulatory guides). The NRC would also need to develop appropriate inspection procedures to confirm compliance with this rule.

NRC staff estimates that it would take approximately 1 staff year or 1,600 hours to develop the final rule and about a half year (800 staff hours) to develop the final regulatory guidance. Lastly, the development of NRC inspection procedures will take about a quarter staff year (400 staff hours). Using the NRC's partially loaded hourly rate of $100 results in the NRC implementation cost of $280,000 (1,600 hrs + 800 hrs + 400 hrs). The NRC estimates that it would take about a quarter staff year to review and comment on each licensee's security plan, training and qualification plan, contingency response plan, and weapons safety assessment, including a round of Requests for Additional

Information. This is estimated to cost the NRC $40,000 per site or $3,280,000 for the industry. Adding this amount to the initial part of the NRC implementation cost estimate of $280,000 results in a total NRC implementation cost of almost $3.6 million.

• *NRC Operation*—The NRC would need to inspect the licensees' periodic inventories, recordkeeping, and training and qualification of enhanced weapons as a result of this rule. These inspections of the licensee's enhanced weapons would take one staff day per year per individual licensee site, with the exception of the first year, which would take 2 staff days per site. This results in a first-year NRC cost of about $1,600 for one site and about $131,200 (82 sites × $1,600/site) industry-wide for the first year. Subsequent years would result in costs of $800 per site and $65,600 (82 sites × $800/site) for industry-wide impacts on the NRC. This results in a discounted flow of funds equal to total operating costs for the inspection of the periodic weapons inventory ranging from an estimated high of about $1,665,000 (using a 3 percent real discount rate) to $934,000 (using a 7 percent rate).

The NRC staff estimates that inspecting the licensee's records program for the mandatory firearms background checks would take one staff day per year per individual licensee site, with the exception of the first year, which would take 2 staff days per site. This results in an NRC cost of about $1,600 for one site the first year and about $131,200 (82 sites × $1,600/site) industry-wide for the first year. Subsequent years would result in NRC costs of $800 per site and $65,600 (82 sites × $800/site) for industry-wide impacts on the NRC. NRC's total operating cost for the records check of the mandatory firearms background checks ranges from an estimated high of $1,665,000 (using a 3 percent real discount rate) to $934,000 (using a 7 percent rate). No separate estimate for NRC costs associated with recordkeeping and processing firearms background checks are provided, because these costs are already included in the NRC's fee for processing a firearms background check.

The NRC's total operating costs are the sum of the above values, which range from slightly under $1.9 million (7 percent rate) to $3.3 million (3 percent rate).

• *Regulatory Efficiency*—The proposed action would result in enhanced regulatory efficiency through regulatory and compliance improvements based upon statutory mandates involving the voluntary possession of enhanced weapons and mandatory firearms background checks at power reactor facilities and 2 Category I SSNM facilities. The proposed action would also result in enhanced regulatory efficiency involving the NRC's ability to monitor ongoing security events at a range of licensed facilities, and the ability to rapidly communicate information on security events at such facilities to other NRC-regulated facilities and other government agencies, as necessary.

• *Public Health (Accident)*—The proposed action would reduce the risk that public health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Occupational Health (Accident)*—The proposed action would reduce the risk that occupational health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Off-Site Property*—The proposed action would reduce the risk that off-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *On-Site Property*—The proposed action would reduce the risk that on-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.

• *Other Government Agencies*—The FBI would be affected by this rule because of its role in processing the mandatory fingerprint checks and firearms background checks the statute requires. The ATF would be affected by this rule because of its involvement with the approval to transfer of enhanced weapons to and from an authorized NRC licensee. Note: The FBI's fees for fingerprinting checks are incorporated within the NRC's fee discussed above. The FBI does not charge a fee for firearms background checks. Also, as previously noted, the ATF taxes to transfer enhanced weapons are not included in this analysis.

Attributes that are *not* expected to be affected under any of the rulemaking options include the following: Occupational health (routine); public health (routine); environmental considerations; general public; improvements in knowledge; and antitrust considerations.

*4. Presentation of Results*

Section 161A of the AEA requires several modifications to 10 CFR part 73. The pertinent sections and appendices which are being revised are §§ 73.2, "Definitions," 73.71, "Reporting of safeguards events" 73.18, "Authorization for use of enhanced weapons and preemption of firearms laws," and 73.19, "Firearms background checks for armed security personnel."

The fundamental incentive for a licensee to choose to obtain enhanced weapons is to increase their defensive capabilities to provide high assurance that public health and safety and the common defense and security will be adequately protected from any attempts of radiological sabotage. Since a licensee's obtaining enhanced weapons is voluntary, licensees must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general; and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. Also, the firearms background checks will provide assurance that security personnel possessing enhanced weapons are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons and ammunition. The NRC staff notes that while licensees would be required to pay an excise tax when transferring enhanced weapons, the tax is not considered a cost of this proposed rule because it is a result of ATF regulations.

The total industry implementation costs for operating reactors is $13,526,000; for Category I SSNM sites $416,000; and for decommissioning sites $3,036,000. The sum of the total industry implementation cost is $17.0 million. The industry operating costs when discounted as flows of funds and based on the assumed lengths of lives of the various facilities ranged from $24.9 million to $46.3 million given the 7 percent and 3 percent real discount rates respectively.

The total costs to industry, including both implementation and operating expenses are estimated to range from $41.9 million to $63.3 million, again given the 7 percent and 3 percent real discount rates respectively.

The NRC implementation costs are almost $3.6 million. The recurring or annual costs are calculated to have a present value of from $1.9 million (7 percent rate) to $3.3 million (3 percent rate). Therefore, the total estimated NRC costs range from about $5.5 million (7 percent rate) to $6.9 million (3 percent rate).

The total quantitative costs estimates for this proposed rulemaking are estimated to be from $47.4 million (7 percent) to $70.2 million (3 percent).

• *Disaggregation*

In order to comply with the guidance provided in Section 4.3.2 (Criteria for the Treatment of Individual Requirements) of the NRC's Regulatory Analysis Guidelines, the NRC conducted a screening review to ensure that the aggregate analysis does not mask the inclusion of individual rule provisions that are not cost-beneficial when considered individually and not necessary to meet the goals of the rulemaking. Consistent with the Regulatory Analysis Guidelines, the NRC evaluated, on a disaggregated basis, each new regulatory provision expected to result in incremental costs. Given that the NRC is required to comply with section 161A of the AEA, the NRC believes that each of these provisions is necessary and cost-justified based on its resulting qualitative benefits, as discussed above.

*5. Decision Rationale*

Relative to the "no-action" alternative, the proposed rule would cost industry from around $42 million to $63 million over the average lifetime of the plants. The total NRC costs would range from $5.5 million to slightly under $7 million. Total costs of the rule are estimated to range from around $47 million to $70 million. The large majority of requirements in this rule is the result of the new section 161A of the AEA. However, there are some items which the NRC has required that were not specifically in the statute. The NRC included them because it needs to be able to respond to public and press inquires on security event issues and the items provided the most opportune method for the NRC to comply with the statute. Furthermore, the NRC concluded that for all of these requirements, and their corresponding costs, the proposed approach is appropriate.

Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide safety and security-related benefits. Offsetting this net cost, the NRC believes that the rule would result in substantial non-quantified benefits related to safety and security, as well as enhanced regulatory efficiency and effectiveness. Therefore, the NRC believes that the rule is cost-justified for several qualitative reasons. First, the proposed rule would provide increased defensive capability of licensees and thus would increase the assurance that a licensee can adequately protect a power reactor facility, decommissioning site, or Category I SSNM facility against an external assault. Second, the proposed rule would provide a mechanism to accomplish a statutory mandate to verify that security officers protecting such facilities are not disqualified under Federal or State law from possessing or using firearms and ammunition. Lastly, as indicated above, licensee application for enhanced weapons authority and preemption authority under section 161A is voluntary.

The NRC also modified the event notification requirements for the following qualitative reasons. This change would result in increasing the NRC's ability to respond to security-related plant events, evaluate ongoing suspicious activities for threat implications, and accomplish the Agency's strategic communication mission.

Based on the NRC's assessment of the costs and benefits of the propose rule on licensee facilities, the agency has concluded that the proposed rule provisions would be justified.

*6. Implementation*

The final rule is to take effect 30 days after publication in the **Federal Register**. A compliance date of 180 days after publication of the final rule will also be established for some provisions of this rule. The NRC staff does not expect this rule to have any impact on other requirements.

## XV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. With respect to the enhanced weapons and firearms background check provisions, this proposed rule affects only the licensing and operation of nuclear power reactors and fuel cycle facilities authorized to possess and use Category I quantities of SSNM. With respect to the security event notification provisions (both reports and records), this proposed rule affects fuel cycle facilities authorized to possess and use Category I quantities of SSNM, Category II and Category III quantities of SNM, hot cell facilities, ISFSIs, MRSs, GROAs, power reactor facilities, production reactor facilities, and research and test reactor facilities. Additionally, this proposed rule also affects licensees and certificate holders engaged in activities involving the transportation of Category I quantities of SSNM, SNF, HLW, and Category II and Category III quantities of SNM. The companies that own or operate these facilities or conduct these activities do not fall within the scope of the definition of "small entities" presented in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

## XVI. Backfit Analysis

The NRC evaluated the aggregated set of requirements in this proposed rule that constitute backfitting in accordance with sections 10 CFR 50.109 and 70.76. The NRC prepared a draft regulatory analysis on the original proposed rule published on October 26, 2006. The backfit analysis is contained within Section 4.2 of that regulatory analysis. Availability information for the draft regulatory (and backfit) analysis is provided in Section IX, "Availability of Documents," of this document. This analysis examined the costs and benefits of the alternatives considered by the NRC.

Many of the provisions of this proposed rule do not constitute backfitting because they are voluntary in nature, and would therefore not impose modifications or additions to existing structures, components, or designs, or existing procedures or organizations. These provisions include those related to application for the use of enhanced weapons and/or preemption authority. Other provisions of the rule implementing section 161A, such as the mandatory firearms background checks, are not backfits because they implement mandatory provisions required by statute.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule are not specifically mandated by statute, or the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General, the Commission believes that such measures are essential for the effective implementation of the rule's requirements, and thus necessary for the adequate protection to the health and safety of the public and are in accord with the common defense and security.

Regarding the provisions of the October 2006 proposed rule and this proposed rule that relate to information collection and reporting requirements, revisions that amend existing information collection and reporting requirements or impose new information and collection and reporting requirements are not considered to be backfits, as presented in the charter for the NRC's Committee to Review Generic Requirements (CRGR).

Therefore, for the reasons stated above, a backfit analysis has not been completed for any of the provisions of this proposed rule.

**List of Subjects in 10 CFR Part 73**

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 73.

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

**Authority:** Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.2, paragraph (a), definitions for "Adverse firearms background check," "Combined enhanced weapons authority and preemption authority," "Covered weapon," "Enhanced weapon," "Firearms background check," "High-level radioactive waste," "NICS," "NICS response," "Satisfactory firearms background check," "Spent nuclear fuel or spent fuel (SNF)," "Stand-alone preemption authority," and "Standard weapon" are added in alphabetical order; and paragraphs (b) and (c) are added to read as follows:

**§ 73.2 Definitions.**

* * * * *

(a) * * *

*Adverse firearms background check* means a firearms background check that has resulted in a "denied" or "delayed" NICS response.

* * * * *

*Combined enhanced weapons authority and preemption authority* means the authority granted the Commission, at 42 U.S.C. 2201a, to authorize licensees or certificate holders, or the designated security personnel of the licensee or certificate holder, to transfer, receive, possess, transport, import, and use one or more category of enhanced weapons, notwithstanding any local, State, or certain Federal firearms laws (including regulations).

* * * * *

*Covered weapon* means any handgun, rifle, shotgun, short-barreled shotgun, short-barreled rifle, semi-automatic assault weapon, machine gun, ammunition for any of these weapons, or a large capacity ammunition feeding device as specified under 42 U.S.C. 2201a. Covered weapons include both enhanced weapons and standard weapons.

* * * * *

*Enhanced weapon* means any short-barreled shotgun, short-barreled rifle, or machine gun. Enhanced weapons do not include destructive devices as defined at 18 U.S.C. 921(a)(4) (*e.g.,* explosives or weapons with a bore diameter greater than 12.7 mm (0.5-in or 50-caliber)). Enhanced weapons do not include standard weapons.

*Firearms background check* means a background check by the U.S. Attorney General as defined at 42 U.S.C. 2201a and that includes a check against the Federal Bureau of Investigation's (FBI's) fingerprint system and the National Instant Criminal Background Check System (NICS).

* * * * *

*High-level radioactive waste* means—

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(2) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

* * * * *

*NICS* means the National Instant Criminal Background Check System established by Section 103(b) of the Brady Handgun Violence Prevention Act, Public Law 103–159 (107 Stat. 1536), that is operated by the FBI.

*NICS response* means a response provided by the FBI as the result of a firearms background check against the NICS. A response from NICS to a firearms background check may be "proceed," "delayed," or "denied."

* * * * *

*Satisfactory firearms background check* means a firearms background check that has resulted in a "proceed" NICS response.

* * * * *

*Spent nuclear fuel or Spent fuel (SNF)* means the fuel that has been withdrawn from a nuclear reactor following irradiation and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with a fuel assembly.

*Stand-alone preemption authority* means the authority granted by the Commission, under 42 U.S.C. 2201a, to authorize licensees or certificate holders, or the designated security personnel of a licensee or certificate holder, to transfer, receive, possess, transport, import, or use one or more categories of standard weapons or enhanced weapons notwithstanding any local, State, or certain Federal firearms laws (including regulations).

*Standard weapon* means any handgun, rifle, shotgun, semi-automatic assault weapon, or a large capacity ammunition feeding device. Standard weapons do not include enhanced weapons.

* * * * *

(b) The terms "ammunition," "handgun," "rifle," "machine gun," "large capacity ammunition feeding device," "semi-automatic assault weapon," "short-barreled shotgun," "short-barreled rifle," and "shotgun" specified in this section have the same meaning as provided for these terms in the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives' regulations at 27 CFR 478.11.

(c) The terms "delayed," "denied," and "proceed" that are used in NICS responses specified in this section have the same meaning as is provided for these terms in the FBI's regulations in 28 CFR 25.2.

3. In § 73.8, paragraphs (b) and (c) are revised to read as follows:

**§ 73.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.18, 73.19, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and Appendices B, C, and G to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

(1) In § 73.19, NRC Form 754 is approved under control number 3150–0204;

(2) In §§ 73.19 and 73.57, FBI Form FD–258 is approved under control number 1110–0046; and

(3) In § 73.71, NRC Form 366 is approved under control number 3150–0104.

4. Section 73.18 is added to read as follows:

**§ 73.18 Authorization for use of enhanced weapons and preemption of firearms laws.**

(a) *Purpose.* This section presents the requirements for licensees and certificate holders to obtain NRC approval to use the authorities provided under 42 U.S.C. 2201a, in protecting Commission-designated classes of facilities, radioactive material, or other property. These authorities include "preemption authority" and "enhanced-weapons authority."

(b) *General Requirements.* (1) Licensees and certificate holders listed in paragraph (c) of this section may apply to the NRC, in accordance with the provisions of this section, to receive stand-alone preemption authority or combined enhanced weapons authority and preemption authority.

(2) With respect to the possession and use of firearms by all other NRC licensees or certificate holders, the Commission's requirements in effect before **(effective date of final rule)** remain applicable, except to the extent those requirements are modified by Commission order or regulations applicable to these licensees and certificate holders.

(c) *Applicability.* (1) Stand-alone preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission pursuant to 42 U.S.C. 2201a—

(i) Power reactor facilities; and

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.28 feet [ft]), without regard to any intervening shielding.

(2) Combined enhanced-weapons authority and preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission under 42 U.S.C. 2201a—

(i) Power reactor facilities; and

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.28 ft), without regard to any intervening shielding.

(d) *Application for stand-alone preemption authority.* (1) Licensees and certificate holders listed in paragraph (c)(1) of this section may apply to the NRC for stand-alone preemption authority using the procedures outlined in this section.

(2) Licensees and certificate holders shall submit an application to the NRC in writing, in accordance with § 73.4, and indicate that the licensee or certificate holder is applying for stand-alone preemption authority at 42 U.S.C. 2201a.

(3)(i) Licensees and certificate holders shall indicate that they have completed satisfactory firearms background checks for their security personnel whose official duties require access to covered weapons, in accordance with § 73.19.

(ii) Alternatively, licensees and certificate holders shall indicate they have commenced firearms background checks for their security personnel whose official duties require access to covered weapons; and they shall subsequently supplement their application to indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements, in accordance with § 73.19.

(4) The NRC will document in writing to the licensee or certificate holder that the Commission has approved or disapproved the licensee's or certificate holder's application for stand-alone preemption authority.

(e) *Application for combined enhanced-weapons authority and preemption authority.* (1) Licensees and certificate holders listed in paragraph (c)(2) of this section may apply to the NRC for combined enhanced-weapons authority and preemption authority.

(2) Licensees and certificate holders shall submit an application to the NRC indicating that the licensee or certificate holder is applying for combined enhanced-weapons authority and preemption authority at 42 U.S.C. 2201a, in accordance with § 73.4, and the license or certificate amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable. Licensees and certificate holders who have previously been approved for stand-alone preemption authority under paragraph (d) of this section are not required to reapply for preemption authority.

(3) Licensees and certificate holders shall include with their application—

(i) The specific information required by paragraph (f) of this section; and

(ii) If applicable, the date they applied to the NRC for stand-alone preemption authority and the date the NRC approved their application.

(4)(i) Licensees and certificate holders shall indicate that they have completed satisfactory firearms background checks for their security personnel whose official duties require access to covered weapons, in accordance with § 73.19.

(ii) Alternatively, licensees and certificate holders shall indicate that they have commenced firearms background checks for their security personnel whose official duties require access to covered weapons. Licensees and certificate holders shall subsequently supplement their application to indicate that a sufficient number of security personnel have completed satisfactory firearms background checks to meet the licensee's or certificate holder's security personnel minimum staffing and fatigue requirements, in accordance with § 73.19.

(5) The NRC will make a final determination on the license application in accordance with § 50.92, 70.35, or 76.45 of this chapter, as applicable, and will document in writing to the licensee or certificate holder that the Commission has approved or disapproved the licensee's or certificate holder's application for combined enhanced-weapons authority and preemption authority.

(6) Subsequent to the NRC's approval of a licensee's or certificate holder's application for combined enhanced weapons authority and preemption authority, if the licensee or certificate holder wishes to use a different type, caliber, or quantity of enhanced weapons from that previously approved by the NRC, then the licensee or certificate holder must submit revised plans and assessments specified by this section to the NRC for prior review and written approval in accordance with the license or certificate amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable.

(f) *Application for enhanced-weapons authority additional information.* (1) Licensees and certificate holders shall also submit to the NRC for prior review and written approval a new, or revised, physical security plan, security personnel training and qualification plan, safeguards contingency plan, and a weapons safety assessment incorporating the use of the specific enhanced weapons the licensee or certificate holder intends to use. These plans and assessments must be specific to the facilities, radioactive material, or other property being protected.

(2) In addition to other requirements presented in this part, these plans and assessments must—

(i) For the physical security plan, identify the specific types or models, calibers, and numbers of enhanced weapons to be used;

(ii) For the training and qualification plan, address the training and qualification requirements to use these specific enhanced weapons;

(iii) For the safeguards contingency plan, address how these enhanced and any standard weapons will be employed by the licensee's or certificate holder's security personnel in meeting the NRC-required protective strategy, including tactical approaches and maneuvers; and

(iv) For the weapons safety assessment—

(A) Assess any potential safety impact on the facility, radioactive material, or other property from the use of these enhanced weapons;

(B) Assess any potential safety impact on public or private facilities, public or private property, or on members of the public in areas outside of the site boundary from the use of these enhanced weapons; and

(C) Assess any potential safety impact on public or private facilities, public or private property, or on members of the public from the use of these enhanced weapons at training facilities intended for proficiency demonstration and qualification purposes.

(D) In assessing potential safety impacts, licensees and certificate holders shall consider both accidental and deliberate discharges of these enhanced weapons. However, licensees and certificate holders are not required to assess malevolent discharges of these enhanced weapons by trained and qualified security personnel who have been screened and evaluated by the licensee's or certificate holder's insider mitigation or personnel reliability programs.

(3) The licensee's or certificate holder's training and qualification plan for enhanced weapons must include information from applicable firearms standards developed by nationally-recognized firearms organizations or standard setting bodies or from standards developed by Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and the U.S. Department of Defense.

(g) *Conditions of approval.* (1) Licensees and certificate holders who have applied to the NRC for and received combined enhanced-weapons authority and preemption authority shall provide a copy of the NRC's authorization to the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF's) Federal firearms license (FFL) holder (*e.g.,* manufacturer or importer) for forwarding to ATF to request the transfer of the enhanced weapons to the licensee or certificate holder.

(2) Licensees and certificate holders receiving enhanced weapons must also obtain any required ATF tax stamps and register these weapons under ATF's regulations under 27 CFR part 479.

(3) All enhanced weapons possessed by the licensee or certificate holder, must be registered under the name of the licensee or certificate holder. Enhanced weapons may not be registered under the name of a licensee's or certificate holder's security contractor.

(4) Licensees and certificate holders obtaining enhanced weapons may, at their discretion, also apply to ATF to obtain an FFL or a special occupational tax stamp in conjunction with obtaining these enhanced weapons.

(h) *Completion of training and qualification before use of enhanced weapons.* (1) Licensees and certificate holders who have applied for and received combined enhanced-weapons authority and preemption authority under this section shall ensure their security personnel complete the required firearms training and qualification in accordance with the licensee's or certificate holder's NRC-approved training and qualification plan.

(2) Initial training and qualification on enhanced weapons must be completed before the security personnel's use of enhanced weapons and must be documented in accordance with the requirements of the licensee's or certificate holder's training and qualification plan.

(3) Recurring training and qualification on enhanced weapons by security personnel must be completed and documented in accordance with the requirements of the licensee's or certificate holder's training and qualification plan.

(i) [Reserved]

(j) *Use of enhanced weapons.* Requirements regarding the use of enhanced weapons by licensee or certificate holder security personnel, in the performance of their official duties, are contained in §§ 73.46 and 73.55 and in appendices B, C, and H of this part, as applicable.

(k) *Notification of adverse ATF findings.* (1) NRC licensees and certificate holders with enhanced weapons shall notify the NRC, in accordance with § 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their receipt, possession, or transfer of enhanced weapons.

(2) NRC licensees and certificate holders that also possess an ATF FFL shall notify the NRC, in accordance with § 73.71, of the receipt of adverse ATF inspection or enforcement findings related to their FFL.

(l) (Reserved).

(m) *Transfer of enhanced weapons.* (1) A licensee's or certificate holder's issuance of enhanced weapons to security personnel is not considered a transfer of those weapons under 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479, if the weapons remain within the site of a facility. Remaining within the site of a facility means within the site boundary, as defined by the licensee's or certificate holder's safety analysis report submitted to the NRC.

(2) A licensee's or certificate holder's issuance of enhanced weapons to security personnel for the permissible reasons specified in paragraph (m)(3) of this section, for activities that are outside of the facility's site boundary, are not considered a transfer at 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479, if—

(i) The security personnel possessing the enhanced weapons are employees of the licensee or certificate holder; or

(ii) The security personnel possessing the enhanced weapons are employees of a contractor providing security services to licensee or certificate holder; and these contractor security personnel are under the direction of, and accompanied by, an authorized licensee or certificate holder employee.

(3) Permissible reasons for removal of enhanced weapons from the licensee's or certificate holder's facility include—

(i) Removal of enhanced weapons for use at a firing range or training facility that is used by the licensee or certificate holder in accordance with its NRC-approved training and qualification plan for enhanced weapons; and

(ii) Removal of enhanced weapons for use in escorting shipments of radioactive material or other property designated under paragraph (c) of this section that are being transported to or from the licensee's or certificate holder's facility.

(4) Removal of enhanced weapons from and/or return of these weapons to the licensee's or certificate holder's facility shall be documented in accordance with the records requirements of paragraph (p) of this section.

(5) Removal of enhanced weapons from a licensee's or certificate holder's facility for other than the permissible

reasons set forth in paragraph (m)(3) of this section shall be considered a transfer of those weapons under 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479. The licensee or certificate holder may only transfer enhanced weapons pursuant to an application approved by ATF in accordance with ATF's regulations. Examples of transfers include, but are not limited to:

(i) Removal of an enhanced weapon from a licensee's or certificate holder's facility to a gunsmith or manufacturer for the purposes of repair or maintenance and subsequent return of the weapon to the licensee or certificate holder;

(ii) Sale or disposal of an enhanced weapon to another authorized NRC licensee or certificate holder;

(iii) Sale or disposal of an enhanced weapon to an authorized Federal firearms license holder, government agency, or official police organization; or

(iv) Abandonment of an enhanced weapon to ATF.

(6) Security personnel shall return enhanced weapons issued from armories to the custody of the licensee or certificate holder following the completion of their official duties.

(7) A licensee or certificate holder obtaining enhanced weapons shall assist the transferor in completing an application to transfer these weapons in accordance with 26 U.S.C. 5812, and shall provide the transferor with a copy of the NRC's written approval of its application for combined enhanced weapons authority and preemption authority.

(8) Enhanced weapons may only be transferred to a licensee or certificate holder, not to a contractor providing security services to the licensee or certificate holder.

(9) A licensee or certificate holder that has authorized the removal of enhanced weapons from its facility, for any of the permissible reasons listed under paragraph (m)(3) of this section, shall verify that these weapons are returned to the facility upon the completion of the authorized activity.

(10) Enhanced weapons that are not returned to the licensee's or certificate holder's facility, following permissible removal, shall be considered a transfer of a weapon under this paragraph, or a stolen or lost weapon under paragraph (o) of this section, as applicable. Information on the transfer, theft, or loss of an enhanced weapon shall be documented as required under paragraph (p) of this section.

(n) *Transport of weapons.* (1) Security personnel transporting enhanced weapons to or from a firing range or training facility used by the licensee or certificate holder shall ensure that these weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

(2) Security personnel transporting covered weapons to or from a licensee's or certificate holder's facility following the completion of, or in preparation for, the duty of escorting shipments of radioactive material or other property, designated under paragraph (c) of this section that is being transported to or from the licensee's or certificate holder's facility shall ensure that these weapons are unloaded and locked in a secure container during transport. Unloaded weapons and ammunition may be transported in the same locked secure container.

(3) Security personnel using covered weapons to protect shipments of radioactive material or other property designated under paragraph (c) of this section that are being transported to or from the licensee's or certificate holder's facility (whether intrastate or interstate) shall ensure that these weapons are maintained in a state of loaded readiness and available for immediate use except when prohibited by 18 U.S.C. 922q.

(4) Security personnel transporting covered weapons to or from the licensee's or certificate holder's facility shall also comply with the requirements of § 73.19.

(5) Situations where security personnel transport enhanced weapons to or from the licensee's or certificate holder's facility are not considered transfers of these weapons at 26 U.S.C. chapter 53, as specified under ATF's regulations in 27 CFR part 479, if—

(i) The security personnel transporting the enhanced weapons are employees of the licensee or certificate holder; or

(ii) The security personnel transporting the enhanced weapons are employees of a contractor providing security services to licensee or certificate holder; and these contractor security personnel are under the direction of, and accompanied by, an authorized licensee employee.

(o) *Periodic inventories of enhanced weapons.* (1) Licensees and certificate holders possessing enhanced weapons under this section shall conduct periodic accountability inventories of the enhanced weapons in their possession to verify the continued presence of each enhanced weapon the licensee or certificate holder is authorized to possess.

(2) The results of any periodic inventories of enhanced weapons shall be retained in accordance with the records requirements of paragraph (q) of this section.

(3) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of their enhanced weapons monthly, as follows—

(i) Licensees and certificate holders shall conduct an inventory to verify that the authorized quantity of enhanced weapons are present at the licensee's or certificate holder's facility.

(ii) Licensees and certificate holders shall verify the presence of each individual enhanced weapon.

(iii) Licensees and certificate holders that store enhanced weapons in a locked secure weapons container (*e.g.,* a ready-service arms locker) located within a protected area, vital area, or material access area may verify the presence of an intact tamper-indicating device (TID) on the locked secure weapons container, instead of verifying the presence of each individual weapon.

(iv) Verification of the presence of enhanced weapons via the presence of an intact TID shall be documented in the inventory records and include the serial number of the TID.

(v) Licensees and certificate holders may use electronic technology (*e.g.,* bar-codes on the weapons) in conducting such inventories.

(vi) The time interval from the previous monthly inventory shall not exceed 30 ± 3 days.

(4) Licensees and certificate holders possessing enhanced weapons under this section shall perform inventories of their enhanced weapons semi-annually, as follows—

(i) Licensees and certificate holders shall conduct an inventory to verify that each authorized enhanced weapon is present at the licensee's or certificate holder's facility through the verification of the serial number of each enhanced weapon.

(ii) Licensees and certificate holders shall verify the presence of each enhanced weapon located in a locked secure weapons container (*e.g.,* a ready-service arms locker) through the verification of the serial number of each enhanced weapon located within the container.

(iii) The time interval from the previous semi-annual inventory shall not exceed 180 ± 7 days.

(iv) Licensees and certificate holders conducting a semi-annual inventory may substitute this semi-annual inventory in lieu of conducting the normal monthly inventory required under paragraph (n) of this section.

(5) Licensees and certificate holders shall conduct monthly and semi-annual inventories of enhanced weapons using a two-person team.

(6) Licensees and certificate holders shall inventory using a two-person team any locked secure weapons container that was sealed with a TID and has subsequently been opened and shall verify the serial number of enhanced weapons stored in the weapons container. The team shall reseal the locked secure weapons container with a new TID and record the TID's serial number in the monthly inventory records.

(7) Licensees and certificate holders shall use TIDs with unique serial numbers on locked secure weapons containers containing enhanced weapons.

(8) Licensees and certificate holders shall store unused TIDs in a manner similar to other security access control devices (*e.g.,* keys, lock cores, *etc.*) and shall maintain a log of issued TID serial numbers.

(9) Licensees and certificate holders must resolve any discrepancies identified during periodic inventories within 24 hours of their identification; otherwise the discrepancy shall be treated as a stolen or lost weapon and notifications made in accordance with paragraph (o) of this section.

(p) *Stolen or lost enhanced weapons.* (1) Licensees and certificate holders that discover any enhanced weapons they are authorized to possess under this section are stolen or lost shall notify the NRC and local law enforcement officials in accordance with § 73.71.

(2) Licensees and certificate holders that discover any enhanced weapons they are authorized to possess under this section are stolen or lost are required to notify ATF in accordance with ATF's regulations.

(q) *Records requirements.* (1) Licensees and certificate holders possessing enhanced weapons under this section shall maintain records relating to the receipt, transfer, and transportation of such enhanced weapons.

(2) Licensees and certificate holders shall maintain the following minimum records regarding the receipt of each enhanced weapon, including—

(i) Date of receipt of the weapon;

(ii) Name and address of the transferor who transferred the weapon to the licensee or certificate holder;

(iii) Name of the manufacturer of the weapon, or the name of the importer (for weapons manufactured outside the U.S.); and

(iv) Model, serial number, type, and caliber or gauge of the weapon.

(3) Licensees and certificate holders shall maintain the following minimum records regarding the transfer of each enhanced weapon, including—

(i) Date of shipment of the weapon;

(ii) Name and address of the transferee who received the weapon; and

(iii) Model, serial number, type, and caliber or gauge of the weapon.

(4) Licensees and certificate holders shall maintain the following minimum records regarding the transportation of each enhanced weapon away from the licensee's or certificate holder's facility, including—

(i) Date of departure of the weapon;

(ii) Date of return of the weapon;

(iii) Purpose of the weapon removal from the facility;

(iv) Name(s) of the security personnel transporting the weapon;

(v) Name(s) of the licensee employee accompanying and directing the transportation, where the security personnel transporting the weapons are employees of a security contractor providing security services to the licensee or certificate holder;

(vi) Name of the person/facility to whom the weapon is being transported; and

(vii) The model, serial number, type, and caliber or gauge of the weapon.

(5) Licensees and certificate holders shall document in these records the discovery that any enhanced weapons they are authorized to possess pursuant to this section are stolen or lost.

(6) Licensees and certificate holders possessing enhanced weapons pursuant to this section shall maintain records relating to the inventories of enhanced weapons for a period up to one year after the licensee's or certificate holder's authority to possess enhanced weapons is terminated, suspended, or revoked under paragraph (r) of this section and all enhanced weapons have been transferred from the licensee's or certificate holder's facility.

(7) Licensees and certificate holders may integrate any records required by this section with records maintained by the licensee or certificate holder under ATF's regulations.

(8) Licensees and certificate holders shall make any records required by this section available to NRC and ATF inspectors or investigators upon the request of such staff.

(r) *Termination, modification, suspension, or revocation of Section 161A authority.*

(1) Licensees and certificate holders who desire to terminate their stand-alone preemption authority or combined enhanced weapons authority and preemption authority, issued under this section, shall apply to the NRC, in accordance with § 73.4, and the license amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable, to terminate their authority. These licensees and certificate holders must have transferred or disposed of any enhanced weapons obtained under the provisions of this section prior to the NRC approval of a request for termination.

(2) Licensees and certificate holders who desire to modify their combined enhanced weapons authority and preemption authority, issued under this section, shall apply to the NRC, in accordance with § 73.4 and the license amendment provisions of §§ 50.90, 70.34, or 76.45 of this chapter, as applicable, to modify their authority. Licensee and certificate holder applications to modify their enhanced weapons authority shall provide the information required under paragraphs (e) and (f) of this section.

(i) Licensees and certificate holders replacing their enhanced weapons with different types or models of enhanced weapons must include a plan to transfer or dispose of their existing enhanced weapons once the new weapons are deployed.

(ii) Licensees and certificate holders adding additional numbers, models, or types of enhanced weapons do not require a transfer or disposal plan.

(3) Licensees and certificate holders must transfer any enhanced weapons that they are no longer authorized to lawfully possess under this section in accordance with the provisions of paragraph (m) of this section. Licensees and certificate holders must dispose of any enhanced weapons to—

(i) A Federal, State, or local government entity authorized to possess enhanced weapons under applicable law and ATF regulations;

(ii) A Federal firearms licensee authorized to receive the enhanced weapons under applicable law and ATF regulations; or

(iii) Another NRC licensee or certificate holder subject to this section that is authorized to receive and possess these specific types of enhanced weapons.

(iv) Alternatively, licensees and certificate holders may also abandon any enhanced weapons to ATF for destruction.

(4) Licensees and certificate holders who had their stand alone preemption authority or combined enhanced weapons and preemption authority terminated, suspended, or revoked may reapply for such authority by filing a new application under the provisions of this section.

(5) The NRC will notify ATF within three business days of issuing a decision to the licensee or certificate holder that the NRC has taken action to terminate, modify, suspend, or revoke a licensee's or certificate holder's stand-alone preemption authority or combined enhanced weapons authority and preemption authority issued under this section of the NRC's action. The NRC shall make such notifications to the position or point of contact designated by ATF.

(6) The Commission may revoke, suspend, or modify, in whole or in part, any approval issued under this section for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means that would warrant the Commission to refuse to grant approval of an original application; or for violation of, or for failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission.

5. Section 73.19 is added to read as follows:

**§ 73.19 Firearms background checks for armed security personnel.**

(a) *Purpose.* This section presents the requirements for completion of firearms background checks at 42 U.S.C. 2201a for security personnel whose official duties require access to covered weapons at Commission-designated classes of facilities, radioactive material, or other property. Firearms background checks are intended to verify that such armed security personnel are not prohibited from receiving, possessing, transporting, importing, or using firearms under applicable Federal or State law, including 18 U.S.C. 922(g) and (n).

(b) *General Requirements.* (1) Licensees and certificate holders who fall within the classes of facilities, radioactive material, or other property listed in paragraph (c) of this section and who use covered weapons as part of their protective strategy shall ensure that a satisfactory firearms background check has been completed for all security personnel requiring access to covered weapons as part of their official duties in protecting such facilities, radioactive material, or other property and for all security personnel who inventory enhanced weapons.

(2) The provisions of this section apply to all security personnel of the licensees or certificate holders whose duties require access to covered weapons, whether employed by the licensee or certificate holder, or a security contractor who provides security services to the licensee or certificate holder.

(3) By **[30 days after the effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section shall commence firearms background checks of all security personnel whose duties require, or will require, access to covered weapons.

(4) By **[180 days after effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section shall—

(i) Remove from duty any existing security personnel whose duties require access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section; and

(ii) Not assign any security personnel to duties that require access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section; and

(iii) Not permit any security personnel access to covered weapons, unless the individual has completed a satisfactory firearms background check per this section.

(5) After **[30 days after the effective date of the final rule]** licensees and certificate holders specified in paragraph (c) of this section must remove any security personnel who receive a "denied" NICS response from duties requiring access to covered weapons.

(6) Within the 180-day transition period specified in paragraph (b)(4) of this section, affected licensees and certificate holders that currently possess enhanced weapons under an authority other than 42 U.S.C. 2201a must remove any security personnel who receive a "delayed" NICS response from duties requiring access to enhanced weapons.

(7) After the **[effective date of the final rule]**, any applicants for a license or a certificate of compliance within the classes of facilities, radioactive material, or other property specified in paragraph (c) of this section and who plan to use covered weapons as part of their protective strategy shall complete satisfactory firearms background checks of their security personnel who will require access to covered weapons as follows—

(i) Licensees and certificate holders may not commence these firearms background checks until after the NRC has issued their license or certificate of compliance.

(ii) Licensees and certificate holders shall complete satisfactory firearms background checks for applicable security personnel before those personnel are permitted access to covered weapons.

(iii) Licensees and certificate holders shall complete satisfactory firearms background checks for applicable security personnel before the licensee's or certificate holder's initial receipt of any source material, special nuclear material, or radioactive material specified under the license or certificate of compliance.

(8) Licensees and certificate holders may return to duties requiring access to covered weapons any individual who has received an adverse firearms background check after the individual completes a satisfactory firearms background check.

(9) Security personnel who have completed a satisfactory firearms background check, but who have had a break in service with the licensee, certificate holder, or their security contractor of greater than one week subsequent to their most recent firearms background check, or who have transferred from a different licensee or certificate holder (even though the other licensee or certificate holder completed a satisfactory firearms background check on these individuals within the last three years), are required to complete a new satisfactory firearms background check.

(10) A change in the licensee, certificate holder, or ownership of a facility, radioactive material, or other property designated under paragraph (c) of this section, or a change in the security contractor that provides security services for protecting such facilities, radioactive material, or other property, does not require a new firearms background check for security personnel who require access to covered weapons.

(11) Firearms background checks are not a substitute for any other background checks or investigations required for the licensee's or certificate holder's personnel under this chapter

(12) Security personnel who have completed a satisfactory firearms background check under Commission orders issued before the NRC issues a final rule designating classes of facilities, radioactive material, or other property under paragraph (c) of this section are not subject to a new initial firearms background check under this section. However, security personnel are subject to the periodic firearms background check requirement of paragraph (f) of this section.

(c) *Applicability.* For the purposes of firearms background checks, the following classes of facilities, radioactive material, or other property

are designated by the Commission at 42 U.S.C. 2201a—

(1) Power reactor facilities; and

(2) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (3.28 ft), without regard to any intervening shielding.

(d) *Firearms background check requirements.* A firearms background check for security personnel must include—

(1) A check of the individual's fingerprints against the Federal Bureau of Investigation's (FBI's) fingerprint system; and

(2) A check of the individual's identifying information against the FBI's National Instant Criminal Background Check System (NICS).

(e) *Firearms background check submittals.* (1) Licensees and certificate holders shall submit to the NRC, in accordance with § 73.4, for all security personnel requiring a firearms background check under this section—

(i) A set of fingerprint impressions, in accordance with paragraph (k) of this section; and

(ii) A completed NRC Form 754.

(2) In lieu of submitting a copy of each individual completed NRC Form 754 to the NRC, licensees and certificate holders may submit a single document consolidating the NRC Forms 754 data for multiple security personnel.

(3) Licensees and certificate holders submitting via an electronic method an individual NRC Form 754 or consolidated data from multiple NRC Forms 754 to the NRC shall ensure that any personally identifiable information contained within these documents is protected in accordance with § 73.4.

(4) Licensees and certificate holders shall retain a copy of all NRC Forms 754 submitted to the NRC for one year subsequent to the termination or denial of an individual's access to covered weapons.

(f) *Periodic firearms background checks.* (1) Licensees and certificate holders shall also complete a satisfactory firearms background check at least once every three calendar years to continue the security personnel's access to covered weapons.

(2) Licensees and certificate holders may conduct these periodic firearms background checks at an interval of less than once every three calendar years, at their discretion.

(3)(i) Licensees and certificate holders must submit the information specified in paragraph (f) of this section within three calendar years of the individual's most recent satisfactory firearms background check.

(ii) Licensees and certificate holders may continue the security personnel's access to covered weapons pending completion of the firearms background check.

(4) Licensees and certificate holders shall remove from duties requiring access to covered weapons any individual who receives an adverse firearms background check.

(5) Licensees and certificate holders may return individuals who have received an adverse firearms background check to duties requiring access to covered weapons, if the individual subsequently completes a satisfactory firearms background check.

(g) *Notification of removal.* Licensees and certificate holders shall telephonically notify the NRC Headquarters Operations Center at the phone numbers specified in Table 1 of Appendix A of this part within 72 hours after removing a security officer from duties requiring access to covered weapons due to the discovery of any disqualifying status or the occurrence of any disqualifying event. However, this requirement does not apply if the removal was due to the prompt notification of the licensee or certificate holder by the security individual under paragraph (h) of this section.

(h) *Security personnel responsibilities.* Security personnel assigned duties requiring access to covered weapons shall notify their employing licensee's or certificate holder's security management within three working days (whether directly employed by the licensee or certificate holder or employed by a security contractor providing security services to the licensee or certificate holder) of the existence of any disqualifying status or upon the occurrence of any disqualifying events listed at 18 U.S.C. 922(g) or (n), and the ATF's implementing regulations in 27 CFR part 478 that would prohibit them from possessing or receiving firearms or ammunition.

(i) [Reserved]

(j) *Training on disqualifying events.* Licensees and certificate holders shall include within their NRC-approved security training and qualification plans instructions on—

(1) Disqualifying status or events specified in 18 U.S.C. 922(g) and (n), and the ATF's implementing regulations in 27 CFR part 478 (including any applicable definitions) identifying categories of persons who are prohibited from possessing or receiving any firearms or ammunition; and

(2) The continuing responsibility of security personnel assigned duties that require access to covered weapons to promptly notify their employing licensee or certificate holder of the occurrence of any disqualifying event.

(k) *Procedures for processing fingerprint checks.* (1) Licensees and certificate holders, using an appropriate method listed in § 73.4, shall submit one completed, legible standard fingerprint card (FBI Form FD–258, ORIMDNRCOOOZ) or, where practicable, other electronic fingerprint record for each individual requiring a firearms background check, to the NRC's Director, Division of Facilities and Security, Mail Stop T6–E46, *Attn:* Criminal History Check. Copies of this form may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232, or by e-mail to *Forms.Resource@nrc.gov.*

(2) Licensees and certificate holders shall indicate on the fingerprint card or other electronic fingerprint record that the purpose for this fingerprint check is the accomplishment of a firearms background check for personnel whose duties require, or will require, access to covered weapons. Licensees and certificate holders shall add the following information to the FBI Form FD–258 fingerprint card or electronic fingerprint records submitted to the NRC:

(i) For fingerprints submitted to the NRC for the completion of a firearms background check only, the licensee or certificate holder will enter the terms "MDNRCNICZ" in the "ORI" field and "Firearms" in the "Reasons Fingerprinted" field of the FBI Form FD–258.

(ii) For fingerprints submitted to the NRC for the completion of both an access authorization check or personnel security clearance check and a firearms background check, the licensee or certificate holder will enter the terms "MDNRC000Z" in the "ORI" field and "Employment and Firearms" in the "Reasons Fingerprinted" field of the FBI Form FD–258.

(3) Licensees and certificate holders shall establish procedures that produce high quality fingerprint images, cards, and records with a minimal rejection rate.

(4) The Commission will review fingerprints for firearms background checks for completeness. Any Form FD–258 or other fingerprint record containing omissions or evident errors will be returned to the licensee or certificate holder for corrections. The fee for processing fingerprint checks

includes one free resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as an initial submittal and require a second payment of the processing fee. The payment of a new processing fee entitles the submitter to an additional free resubmittal, if necessary. Previously rejected submissions may not be included with the third submission because the submittal will be rejected automatically.

(5) The Commission will forward to the submitting licensee or certificate holder all data received from the FBI as a result of the licensee's or certificate holder's application(s) for fingerprint background checks, including the FBI's fingerprint record. For a firearms background check by itself, the FBI will only provide the "proceed," "delayed," or "denied" responses and will not provide the FBI's fingerprint record.

(l) [Reserved]

(m) *Fees.* (1) Fees for the processing of firearms background checks are due upon application. The fee for the processing of a firearms background check consists of a fingerprint fee and a NICS check fee. Licensees and certificate holders shall submit payment with the application for the processing of fingerprints, and payment must be made by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. Nuclear Regulatory Commission." Combined payment for multiple applications is acceptable. The Commission publishes the amount of the firearms background check application fee on the NRC's public Web site.[4] The Commission will directly notify licensees and certificate holders who are subject to this regulation of any fee changes.

(2) The application fee for the processing of fingerprint checks is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee or certificate holder, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee and certificate holder fingerprint submissions.

[4] For information on the current fee amount, go to the Electronic Submittals page at *http//www.nrc.gov/site-help/e-submittals.html*, and see the link for Firearms Background Checks under Electronic Submission Systems.

(3) The application fee for the processing of NICS checks is an administrative processing fee assessed by the NRC. The FBI does not charge a fee for processing NICS checks.

(n) *Processing of the NICS portion of a firearms background check.* (1) The NRC will forward the information contained in the submitted NRC Forms 754 to the FBI for evaluation against the NICS databases. Upon completion of the NICS portion of the firearms background check, the FBI will inform the NRC of the results with one of three responses under 28 CFR part 25; "proceed," "delayed," or "denied," and the associated NICS transaction number. The NRC will forward these results and the associated NICS transaction number to the submitting licensee or certificate holder.

(2) The submitting licensee or certificate holder shall provide these results to the individual who completed the NRC Form 754.

(o) *Reporting violations of law.* The NRC will promptly report suspected violations of Federal law to the appropriate Federal agency or suspected violations of State law to the appropriate State agency.

(p) *Appeals and resolution of erroneous system information.*

(1) Individuals who require a firearms background check under this section and who receive a "denied" or a "delayed" NICS response may not be assigned duties requiring access to covered weapons, except as provided under paragraph (b) of this section, during the pendency of an appeal of the results of the check or during the pendency of providing and evaluating any necessary additional information to the FBI to resolve the "delayed" response, respectively.

(2) Licensees and certificate holders shall provide information on the FBI's procedures for appealing a "denied" response to the denied individual or on providing additional information to the FBI to resolve a "delayed" response.

(3) An individual who receives a "denied" or "delayed" NICS response to a firearms background check under this section may request the reason for the response from the FBI. The licensee or certificate holder shall provide to the individual who has received the "denied" or "delayed" response the unique NICS transaction number associated with their specific firearms background check.

(4)(i) These requests for the reason for a "denied" or "delayed" NICS response must be made in writing, and must include the NICS transaction number. The request must be sent to the Federal Bureau of Investigation, NICS Section, Appeals Service Team, Module A–1; PO Box 4278, Clarksburg, WV 26302–9922.

(ii) The FBI will provide the individual with the reasons for the "denied" response or "delayed" response. The FBI will also indicate whether additional information or documents are required to support an appeal or resolution, for example, where there is a claim that the record in question does not pertain to the individual who received the "denied" response.

(5) If the individual wishes to challenge the accuracy of the record upon which the "denied" or "delayed" response is based, or if the individual wishes to assert that his or her rights to possess or receive a firearm have been restored by lawful process, he or she may first contact the FBI at the address stated in paragraph (p)(4)(i) of this section.

(i) The individual shall file any appeal of a "denied" response or file a request to resolve a "delayed" response within 45 calendar days of the date the NRC forwards the results of the firearms background check to the licensee or certificate holder.

(ii) Individuals appealing a "denied" response or resolving a "delayed" response are responsible for providing the FBI any additional information the FBI requires to resolve the adverse response. These individuals must supply this information to the FBI within 45 calendar days after the FBI's response is issued.

(iii) Individuals may request extensions of the time to supply the additional information requested by the FBI in support of a timely appeal or resolution request. These extension requests shall be made directly to the FBI. The FBI may grant an extension request for good cause, as determined by the FBI.

(iv) The appeal or request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge. Any record or document of a court or other government entity or official furnished in support of an appeal must be certified by the court or other government entity or official as a true copy.

(v) The individual may supplement their initial appeal or request—subsequent to the 45-day filing deadline—with additional information as it becomes available, for example, where obtaining a true copy of a court transcript may take longer than 45 days. The individual should note in their appeal or request any information or records that are being obtained, but are not yet available.

(6) If the individual is notified that the FBI is unable to resolve the appeal, the individual may then apply for correction of the record directly to the agency from which the information forming the basis of the denial was originated. If the individual is notified by the originating agency that additional information or documents are required, the individual may provide them to the originating agency. If the record is corrected as a result of the appeal to the originating agency, the individual may so notify the FBI and submit written proof of the correction.

(7) The failure of an individual to timely initiate an appeal or resolution request or timely provide additional information requested by the FBI will result in the barring of the individual or abandonment of the individual's appeal or resolution request.

(8) Appeals or resolution requests that are abandoned or result in debarment because of an individual's failure to comply with submission deadlines may only be pursued, at the sole discretion of a licensee or certificate holder, after the resubmission of a firearms background check request on the individual.

(9) An individual who has satisfactorily appealed a "denied" response or resolved a "delayed" response may provide written consent to the FBI to maintain information about himself or herself in a Voluntary Appeal File (VAF) to be established by the FBI and checked by the NICS for the purpose of preventing the erroneous denial or extended delay by the NICS of any future or periodic firearms background checks.

(q) *Protection of information.* (1) Each licensee or certificate holder who obtains a firearms background check and NRC Form 754 information on individuals under this section shall establish and maintain a system of files and procedures to protect the records and personal information from unauthorized disclosure.

(2) The licensee or certificate holder may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting access to covered weapons. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a firearms background check may be transferred to another licensee or certificate holder—

(i) Upon the individual's written request to the licensee or certificate holder holding the data to re-disseminate the information contained in his/her file; and

(ii) Upon verification from the gaining licensee or certificate holder of information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

(4) The licensee or certificate holder shall make firearms background check records and NRC Forms 754 obtained under this section available for examination by an authorized representative of the NRC to determine compliance with applicable regulations and laws.

6. In § 73.46, paragraph (b)(13) is added to read as follows:

**§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.**

* * * * *

(b) * * *

(13)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 6 months of the issuance of the license, or within 6 months of the implementation of a protective strategy that uses covered weapons, whichever is later.

* * * * *

7. In § 73.55, paragraph (b)(12) is added to read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

* * * * *

(b) * * *

(12)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or to inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 6 months of the issuance of the license, or within 6 months of the implementation of a protective strategy that uses covered weapons, whichever is later.

* * * * *

8. Section 73.71 is revised to read as follows:

**§ 73.71 Reporting and recording of safeguards events.**

(a) *15-minute notifications—facilities.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.45, 73.46, or 73.55 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than 15 minutes after—

(1) The discovery of an imminent or actual hostile action against a nuclear power or production reactor or Category I SSNM facility; or

(2) The initiation of a security response in accordance with a licensee's or certificate holder's safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a nuclear power reactor or Category I SSNM facility;

(3) These notifications shall:

(i) Identify the facility name;

(ii) Include the authentication code; and

(iii) Briefly describe the nature of the hostile action or event, including:

(A) Type of hostile action or event (*e.g.,* armed assault, vehicle bomb, credible bomb threat, *etc.*); and

(B) Current status (*i.e.,* imminent, in progress, or neutralized).

(4) Notifications must be made according to paragraph (j) of this section, as applicable.

(5) The licensee or certificate holder is not required to report security responses initiated as a result of threat or warning information communicated to the licensee or certificate holder by the NRC.

(6) A licensee's or certificate holder's request for immediate local law enforcement agency (LLEA) assistance can take precedence over the notification to the NRC.

(b) *15-minute notifications—shipments.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.25, 73.26, or 73.37 shall notify the NRC Headquarters Operations Center or make provisions to notify the NRC Headquarters Operations Center, as soon as possible but not later than 15 minutes after—

(1) The discovery of an actual or attempted act of sabotage against shipments of spent nuclear fuel or high-level radioactive waste;

(2) The discovery of an actual or attempted act of sabotage or of theft against shipments of strategic special nuclear material; or

(3) The initiation of a security response in accordance with a licensee's or certificate holder's safeguards contingency plan or protective strategy, based on an imminent or actual hostile action against a shipment of spent nuclear fuel, high-level radioactive waste, or strategic special nuclear material.

(4) These notifications shall:

(i) Identify the name of the facility making the shipment, the material being shipped, and the last known location of the shipment; and

(ii) Briefly describe the nature of the threat or event, including:

(A) Type of hostile threat or event (*e.g.,* armed assault, vehicle bomb, theft of shipment, *etc.*); and

(B) Threat or event status (*i.e.,* imminent, in progress, or neutralized).

(5) Notifications must be made according to paragraph (j) of this section, as applicable.

(6) The licensee or certificate holder is not required to report security responses initiated as a result of threat or warning information communicated to the licensee or certificate holder by the NRC.

(7) A licensee's or certificate holder's request for immediate LLEA assistance can take precedence over the notification to the NRC.

(c) *One-hour notifications—facilities.* (1) Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center within one hour after discovery of the facility safeguards events described in paragraph I of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(3) Notifications made under paragraph (a) of this section are not required to be repeated under this paragraph.

(d) *One-hour notifications—shipments.* (1) Each licensee or certificate holder subject to the provisions of §§ 73.25, 73.26, 73.27, 73.37, and 73.67 shall notify the NRC Headquarters Operations Center within one hour after discovery of the transportation safeguards events described in paragraph I of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(3) Notifications made under paragraph (b) of this section are not required to be repeated under this paragraph.

(e) *Four-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than four hours after discovery of the safeguards events described in paragraph II of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(f) *Eight-hour notifications—facilities.* (1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall notify the NRC Headquarters Operations Center, as soon as possible but not later than eight hours after discovery of the safeguards events described in paragraph III of Appendix G to this part.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(g) *Enhanced weapons—stolen or lost.* (1) Each licensee or certificate holder possessing enhanced weapons in accordance with the provisions of § 73.18 shall—

(i) Notify the NRC Headquarters Operations Center, as soon as possible but not later than one hour after the discovery of any stolen or lost enhanced weapons possessed by the licensee or certificate holder. This notification applies to enhanced weapons that were stolen or lost from within a licensee's or certificate holder's protected area, vital area, or material access area.

(ii) Notify the NRC Headquarters Operations Center, as soon as possible but not later than four hours subsequent to the notification of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the discovery of any stolen or lost enhanced weapons possessed by the licensee or certificate holder. This notification applies to enhanced weapons that were stolen or lost from outside of the licensee's or certificate holder's protected area, vital area, or material access area.

(iii) Notify the appropriate local law enforcement officials, as soon as possible but not later than 48 hours of the discovery of stolen or lost enhanced weapons. These notifications must be made by telephone to the appropriate local law enforcement officials. Licensees and certificate holders shall identify the appropriate local law enforcement officials for these notifications and include their contact phone number(s) in written procedures.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(3) Independent of the requirements of this section, licensees and certificate holders possessing enhanced weapons in accordance with § 73.18 also have an obligation under ATF's regulations to immediately upon discovery notify ATF of any stolen or lost enhanced weapons (*see* 27 CFR 479.141).

(h) *Enhanced weapons—adverse ATF findings.* (1) Each licensee or certificate holder possessing enhanced weapons in accordance with § 73.18 shall—

(i) Notify the NRC Headquarters Operations Center as soon as possible but not later than 24 hours after receipt of an adverse inspection or enforcement finding or other adverse notice from the ATF regarding the licensee's or certificate holder's possession, receipt, transfer, or storage of enhanced weapons; and

(ii) Notify the NRC Headquarters Operations Center as soon as possible but not later than 24 hours after receipt of an adverse inspection or enforcement finding or other adverse notice from the ATF regarding the licensee's or certificate holder's ATF issued Federal firearms license.

(2) Notifications must be made according to paragraph (j) of this section, as applicable.

(i) [Reserved]

(j) *Notification process.* (1) Each licensee and certificate holder shall make the telephonic notifications required by paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section to the NRC Headquarters Operations Center via any available telephone system. Commercial telephone numbers for the NRC Headquarters Operations Center are specified in Table 1 of Appendix A of this part.

(2) Licensees and certificate holders shall make required telephonic notifications via any method that will ensure that a report is received by the NRC Headquarters Operations Center or other specified government officials within the timeliness requirements of paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this section, as applicable.

(3) Notifications required by this section that contain Safeguards Information may be made to the NRC Headquarters Operations Center without using secure communications systems under the exception of § 73.22(f)(3) of this part for emergency or extraordinary conditions.

(4)(i) Notifications required by this section that contain classified national security information and/or restricted data must be made to the NRC Headquarters Operations Center using secure communications systems appropriate to the classification level of the message. Licensees and certificate holders making classified telephonic notifications shall contact the NRC Headquarters Operations Center at the commercial numbers specified in Table 1 of Appendix A to this part and request a transfer to a secure telephone, as specified in paragraph III of Appendix A to this part.

(ii) If the licensee's or certificate holder's secure communications capability is unavailable (*e.g.,* due to the nature of the security event), the licensee or certificate holder shall provide as much information to the NRC as is required by this section, without revealing or discussing any classified information, in order to meet the timeliness requirements of this section. The licensee or certificate holder shall also indicate to the NRC that its secure communications capability is unavailable.

(iii) Licensees and certificate holders using a non-secure communications capability may be directed by the NRC Emergency Response management to provide classified information to the NRC over the non-secure system, due to the significance of the ongoing security event. In such circumstances, the licensee or certificate holder shall document this direction and any information provided to the NRC over a non-secure communications capability in the follow-up written report required in accordance with paragraph (m) of this section.

(5)(i) For events reported under paragraph (a) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center as soon as possible. Licensees and certificate holders shall establish the requested continuous communication channel once the licensee or certificate holder has completed other required notifications under this section, § 50.72 of this chapter, Appendix E of part 50 of this chapter, or § 70.50 of this chapter; or completed any immediate actions required to stabilize the plant, to place the plant in a safe condition, to implement defensive measures, or to request assistance from the LLEA.

(ii) When established, the continuous communications channel shall be staffed by a knowledgeable individual in the licensee's security, operations, or emergency response organizations from a location deemed appropriate by the licensee.

(iii) The continuous communications channel may be established via any available telephone system.

(6)(i) For events reported under paragraph (b) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center as soon as possible. Licensees and certificate holders shall establish the requested continuous communication channel once the licensee or certificate holder has completed other required notifications under this section, § 50.72 of this chapter, Appendix E of part 50 of this chapter, or § 70.50 of this chapter; or requested assistance from the LLEA.

(ii) When established, the continuous communications channel shall be staffed by a knowledgeable individual in the communication center monitoring the shipment.

(iii) The continuous communications channel may be established via any available telephone system.

(7) For events reported under paragraphs (c), (d), (e), (f), (g), and (h) of this section, the NRC may request that the licensee or certificate holder maintain an open and continuous communication channel with the NRC Headquarters Operations Center.

(8) Licensees and certificate holders desiring to retract a previous security event report that has been determined to be invalid shall telephonically notify the NRC Headquarters Operations Center in accordance with paragraph (j) of this section and shall indicate the report being retracted and basis for the retraction.

(k) *Safeguards event log.* Each licensee or certificate holder subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, or 73.67 shall maintain a safeguards event log.

(1) The licensee or certificate holder shall record the facility-based or transportation-based events described in paragraph IV of Appendix G of this part within 24 hours of discovery in the safeguards event log.

(2) The licensee or certificate holder shall retain the safeguards event log as a record for three years after the last entry is made in each log or until the termination of the license or certificate of compliance.

(l) (Reserved).

(m) *Written reports.* (1) Each licensee or certificate holder making an initial telephonic notification under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section shall also submit a written follow-up report to the NRC within 60 days of the telephonic notification, in accordance with § 73.4.

(2) Licenses and certificate holders are not required to submit a written report following a telephonic notification made under paragraphs (g) and (h) of this section.

(3) Licenses and certificate holders are not required to submit a written report following a telephonic notification made under paragraph (j) of this section involving suspicious event or law enforcement interaction specified in paragraphs II(a), II(c), or II(d) of Appendix G.

(4) Each licensee and certificate holder shall submit to the Commission written reports that are of a quality that will permit legible reproduction and processing.

(5) Licensees subject to § 50.73 of this chapter shall prepare the written report on NRC Form 366.

(6) Licensees and certificate holders not subject to § 50.73 of this chapter shall prepare the written report in letter format.

(7) In addition to the addressees specified in § 73.4, the licensee or certificate holder shall also provide one copy of the written report addressed to the Director, Office of Nuclear Security and Incident Response (NSIR). The copy of a classified written report to the Director, NSIR, shall be provided to the NRC headquarters' classified mailing address specified in Table 2 of Appendix A to this part or in accordance with paragraph IV of Appendix A to this part.

(8) The report must include sufficient information for NRC analysis and evaluation.

(9) Significant supplemental information that becomes available after the initial telephonic notification to the NRC Headquarters Operations Center or after the submission of the written report must be telephonically reported to the NRC Headquarters Operations Center under paragraph (j) of this section and also submitted in a revised written report (with the revisions indicated) as required under paragraph (m) of this section.

(10) Errors discovered in a written report must be corrected in a revised written report with the revisions indicated.

(11) The revised written report must replace the previous written report; the update must be complete and not be limited to only supplementary or revised information.

(12) Each licensee and certificate holder shall maintain a copy of the written report of an event submitted under this section as a record for a period of three years from the date of the report or until termination of the license or the certificate of compliance.

(13)(i) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid and has not yet submitted a written report required by paragraph (m) of this section, then submission of a written report is not required.

(ii) If the licensee or certificate holder subsequently retracts a telephonic notification made under this section as invalid, after it has submitted a written report required by paragraph (m) of this section, then the licensee or certificate holder shall submit a revised written report in accordance with paragraph (m) of this section.

(14) Each written report containing Safeguards Information or classified information must be created, stored, marked, labeled, handled, and transmitted to the NRC in accordance with the requirements of §§ 73.21 and 73.22 of this part or with part 95 of this chapter, as applicable.

(n) *Declaration of emergencies.* Notifications made to the NRC for the declaration of an emergency class shall be performed in accordance with §§ 50.72, 70.50, 72.75, and 76.120 of this chapter, as applicable.

(o) *Elimination of duplication.* Separate notifications and reports are not required for events that are also reportable in accordance with §§ 50.72, 50.73, 70.50, 72.75, and 76.120 of this chapter. However, these notifications should also indicate the applicable § 73.71 reporting criteria.

9. In appendix A to part 73, a heading is added for Table 1, the first row in Table 1 is revised, the heading for Table 2 is revised, and paragraphs III and IV are added to read as follows:

**APPENDIX A TO PART 73—U.S. NUCLEAR REGULATORY COMMISSION OFFICES AND CLASSIFIED MAILING ADDRESSES**

TABLE 1—MAILING ADDRESSES, TELEPHONE NUMBERS, AND E-MAIL ADDRESSES

| | Address | Telephone (24 hour) | E-Mail |
|---|---|---|---|
| NRC Headquarters Operations Center .... | USNRC, Division of Preparedness and Response, Washington, DC 20555–0001. | (301) 816–5100, and (301) 816–5151 (fax). | *Hoo.Hoc@nrc.gov* *Hoo.Hoc@usnrc.sgov.gov* (secure) |

* * * * *

**Table 2—Classified Mailing Addresses**

* * * * *

III. Classified telephone calls must be made to the telephone numbers for the NRC Headquarters Operations Center in Table 1 of this appendix and the caller shall request transfer to a secure telephone to convey the classified information.

IV. Classified e-mails must be sent to the secure e-mail address specified in Table 1 of this appendix.

10. In appendix B to part 73, the heading for section I.A in the Table of Contents and section I.A are revised to read as follows:

**Appendix B to Part 73—General Criteria for Security Personnel**

* * * * *

I. * * *

A. Employment suitability.

* * * * *

I. Employment suitability and qualification.

A. Employment suitability.

1. Suitability.

(a) Before employment, or assignment to the security organization, an individual shall:

(1) Possess a high school diploma or pass an equivalent performance examination designed to measure basic mathematical, language, and reasoning skills, abilities, and knowledge required to perform security duties and responsibilities;

(2) Have attained the age of 21 for an armed capacity or the age of 18 for an unarmed capacity; and

(3) Not have any felony convictions that reflect on the individual's reliability.

(4) Individuals in an armed capacity would not be disqualified from possessing or using firearms or ammunition in accordance with applicable State or Federal law, to include 18 U.S.C. 922. Licensees shall use information that has been obtained during the completion of the individual's background investigation for unescorted access to determine suitability. Satisfactory completion of a firearms background check for the individual under § 73.19 of this part will also fulfill this requirement.

(b) The qualification of each individual to perform assigned duties and responsibilities must be documented by a qualified training instructor and attested to by a security supervisor.

* * * * *

11. Appendix G to part 73 is revised to read as follows:

**Appendix G to Part 73—Reportable and Recordable Safeguards Events**

Under the provisions of § 73.71(c), (e), and (j), licensees and certificate holders subject to the provisions of §§ 73.20, 73.45, 73.46, 73.54, and 73.55 of this part shall telephonically report the safeguards events specified under paragraphs I, II, and III of this appendix. Under the provisions of § 73.71(c), (d), and (j), licensees and certificate holders subject to the provisions of §§ 73.25, 73.26, 73.27, 73.37, 73.50, 73.51, 73.60, and 73.67 of this part shall telephonically report the safeguards events specified under paragraphs I and III of this appendix. Licensees and certificate holders shall make such telephonic reports to the Commission in accordance with the provisions of § 73.71 and appendix A to this part.

Under the provisions of § 73.71(k), licensees and certificate holders subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.60, and 73.67 of this part shall record in a safeguards event log the safeguards events specified under paragraph IV of this appendix. Licensees and certificate holders shall record these events in accordance with the provisions of § 73.71.

**I. Events To Be Reported Within One Hour of Discovery**

(a) *Significant security events.* Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a threat to commit or cause:

(1) A theft or diversion of special nuclear material;

(2) Significant physical damage to any nuclear reactor or facility possessing or using Category I strategic special nuclear material;

(3) Significant physical damage to any vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself;

(4) The unauthorized operation, manipulation, or tampering with any nuclear reactor's controls or with structures, systems, and components (SSCs) that results in the interruption of normal operation of the reactor; or

(5) The unauthorized operation, manipulation, or tampering with any Category I strategic special nuclear material (SSNM) facility's controls or SSCs that

results in the interruption of normal operation of the facility.

(b) *Unauthorized entry events.*

(1) An actual entry of an unauthorized person into a facility's protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA).

(2) An actual entry of an unauthorized person into a transport vehicle.

(3) An attempted entry of an unauthorized person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted entry of an unauthorized person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(c) *Contraband events.*

(1) The actual introduction of contraband into a PA, VA, MAA, or CAA.

(2) The actual introduction of contraband into a transport.

(3) An attempted introduction of contraband by a person with malevolent intent into a PA, VA, MAA, or CAA.

(4) An attempted introduction of contraband by a person with malevolent intent into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(d) *Authorized weapon events.*

(1) The discovery that a standard weapon that is authorized by the licensee's security plan is lost or uncontrolled within a PA, VA, MAA, or CAA.

(2) Uncontrolled authorized weapons means weapons that are authorized by the licensee's or certificate holder's security plan and are not in the possession of authorized personnel or are not in an authorized weapons storage location.

(e) *Vehicle barrier system events.* For licensees and certificate holders with a vehicle barrier system protecting their facility, the actual or attempted introduction of explosives or incendiaries beyond the vehicle barrier.

(f) *Uncompensated security events.* Any failure, degradation, or the discovered vulnerability in a safeguard system, for which compensatory measures have not been employed, that could allow unauthorized or undetected access of—

(1) Explosives or incendiaries beyond a vehicle barrier;

(2) Personnel or contraband into a PA, VA, MAA, or CAA; or

(3) Personnel or contraband into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(g) *Lost shipments of nuclear or radioactive material.*

(1) The discovery of the loss of a shipment of Category I SSNM, Category II and III special nuclear material, spent nuclear fuel, or high-level radioactive waste.

(2) The recovery of or accounting for a lost shipment.

(h) *Cyber security events.*

(1) Any event in which there is reason to believe that a person has committed or caused, or attempted to cause, or has made a threat to commit or cause, an act to modify, destroy, or compromise any systems, networks, or equipment that falls within the scope of § 73.54 of this part.

(2) Uncompensated cyber security events. Any failure, degradation, or the discovered vulnerability in systems, networks, and equipment that falls within the scope of § 73.54 of this part, for which compensatory measures have not been employed and that could allow unauthorized or undetected access into such systems, networks, or equipment.

(i) [Reserved]

(j) *Loss or theft of classified information.* The discovery of the loss or theft of classified material (*e.g.,* documents, drawings, analyses, or data) that contains either National Security Information or Restricted Data.

(k) *Loss or theft of Safeguards Information.* The discovery of the loss or theft of material (*e.g.,* documents, drawings, analyses, or data) that contains Safeguards Information—

(1) Provided that such material could substantially assist an adversary in the circumvention of the facility or transport security or protective systems or strategies; or

(2) Provided that such material is lost or stolen in a manner that could allow a significant opportunity for the compromise of the Safeguards Information.

**II. Events To Be Reported Within Four Hours of Discovery**

(a) *Suspicious events.* Any information received by the licensee of suspicious or surveillance activities or attempts at access, including:

(1) Any event or incident involving suspicious activity that may be indicative of potential pre-operational surveillance, reconnaissance, or intelligence-gathering activities directed against the facility. This type of activity may include, but is not limited to—

(A) Attempted surveillance or reconnaissance activity. Commercial or military aircraft activity considered routine or non-threatening by the licensee or certificate holder is not required to be reported;

(B) Elicitation of information from facility personnel relating to the security or safe operation of the facility; or

(C) Challenges to security systems (*e.g.,* willful failure to stop for security checkpoints, possible tests of security response and security screening equipment, or suspicious entry of watercraft into posted off-limits areas).

(2) Any event or incident involving suspicious aircraft activity over or in close proximity to the facility. Commercial or military aircraft activity considered routine or non-threatening by the licensee or certificate holder is not required to be reported.

(b) *Unauthorized operation or tampering events.* An event involving—

The unauthorized operation, manipulation, or tampering of any nuclear reactor's or Category I SSNM facility's SSCs that could prevent the implementation of the licensee's or certificate holder's protective strategy for protecting any target set.

(c) *Suspicious cyber security events.*

(1) Any information received or collected by the licensee or certificate holder of suspicious activity that may be indicative of tampering, malicious or unauthorized access, use, operation, manipulation, modification, potential destruction, or compromise of the systems, networks, and equipment that falls within the scope of § 73.54 of this part, or the security measures that could weaken or disable the protection for such systems, networks, or equipment.

(2) An attempted but unsuccessful cyber attack or event that could have caused significant degradation to any system, network, or equipment that falls within the scope of § 73.54 of this part.

(d) *Law enforcement interactions.* (1) An event related to the licensee's or certificate holder's implementation of their security program for which a notification was made to local, State, or Federal law enforcement officials and that does not otherwise require a notification under paragraph I or the other provisions of paragraph II of this appendix.

(2) An event involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs I or the other provisions of paragraph II of this appendix.

**III. Events To Be Reported Within Eight Hours of Discovery**

*Unauthorized operation or tampering events.* An event involving—

(1) The unauthorized operation, manipulation, or tampering with any nuclear reactor's controls or SSCs that does not result in the interruption of the normal operations of the reactor;

(2) The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's controls or SSCs that does not result in the interruption the normal operations of the facility; or

(3) The tampering, malicious or unauthorized access, use, operation, manipulation, or modification of any security measures associated with systems, networks, and equipment that falls within the scope of § 73.54 of this part, that does not result in the interruption of the normal operation of such systems, networks, or equipment.

**IV. Events To Be Recorded in the Safeguards Event Log Within 24 Hours of Discovery**

(a) *Compensated security events.* Any failure, degradation, or discovered vulnerability in a safeguards system, had compensatory measures not been established, that could have—

(1) Allowed unauthorized or undetected access of—

(i) Explosives or incendiaries beyond a vehicle barrier;

(ii) Personnel or contraband into a PA, VA, MAA, or CAA; or

(iii) Personnel or contraband into a vehicle transporting special nuclear material, spent nuclear fuel, or high-level radioactive waste; or to the special nuclear material, spent nuclear fuel, or high-level radioactive waste itself.

(2) Degrade the effectiveness of the licensee's or certificate holder's cyber security program or allow unauthorized or undetected access to any systems, networks, or equipment that fall within the scope of § 73.54 of this part. Decreases in the effectiveness of the cyber security program include any other threatened, attempted, or committed act not previously defined in this appendix that has resulted in or has the potential for decreasing the effectiveness of the cyber security program in a licensee's or certificate holder's NRC-approved cyber security plan.

(b) *Ammunition events.*

(1) A discovery that ammunition that is authorized by the licensee's security plan has been lost or uncontrolled inside a PA, VA, MAA, or CAA.

(2) A discovery that unauthorized ammunition is inside a PA, VA, MAA, or CAA.

(3)(i) Uncontrolled authorized ammunition means ammunition authorized by the licensee's or certificate holder's security plan or contingency response plan that is not in the possession of authorized personnel or is not in an authorized ammunition storage location.

(ii) Uncontrolled unauthorized ammunition means ammunition that is not authorized by the licensee's or certificate holder's security plan or contingency response plan.

(iii) Ammunition in the possession of law-enforcement personnel performing official duties inside a PA, VA, MAA, or CAA is considered controlled and authorized.

(4) The discovery of lost or uncontrolled authorized or unauthorized ammunition under circumstances that indicate the potential for malevolent intent shall be reported under paragraph I(f) of this appendix.

(c) *Loss of control or protection of classified information.* A discovery that a loss of control over, or protection of, classified material containing National Security Information or Restricted Data has occurred, provided—

(1) There does not appear to be evidence of theft or compromise of the material, and

(2) The material is recovered or secured within one hour of the loss of control or protection.

(d) *Loss of control or protection of Safeguards Information.* A discovery that a loss of control over, or protection of, classified material containing Safeguards Information has occurred, provided—

(1) There does not appear to be evidence of theft or compromise of the material, and

(2) The material is recovered or secured within one hour of the loss of control or protection; or

(3) The material would not have allowed unauthorized or undetected access to facility or transport contingency response procedures or strategies.

(e) *Decreases in the effectiveness of the physical security program or the cyber security program.* Any other threatened, attempted, or committed act not previously defined in this appendix that has resulted in or has the potential for decreasing the effectiveness of the licensee's or certificate holder's physical security program or cyber security program below that committed to in a licensee's or certificate holder's NRC-approved physical security plan or cyber security plan.

(f) *Non duplication.* Events reported under paragraphs I, II, or III of this appendix are not required to be recorded under the safeguards event log.

Dated at Rockville, Maryland, this 21st day of January 2011.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2011–1766 Filed 2–2–11; 8:45 am]

**BILLING CODE 7590–01–P**

# FEDERAL REGISTER

Vol. 76 Thursday,
No. 23 February 3, 2011

Part III

## Department of Justice

28 CFR Part 115
National Standards To Prevent, Detect, and Respond to Prison Rape; Proposed Rule

**DEPARTMENT OF JUSTICE**

**28 CFR Part 115**

**[Docket No. OAG–131; AG Order No. 3244–2011]**

**RIN 1105–AB34**

## National Standards To Prevent, Detect, and Respond to Prison Rape

**AGENCY:** Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice (Department) has under review national standards for combating sexual abuse in confinement settings that were prepared by the National Prison Rape Elimination Commission (Commission) pursuant to the Prison Rape Elimination Act of 2003 (PREA) and recommended by the Commission to the Attorney General. On March 10, 2010, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input on the Commission's proposed national standards and to receive information useful to the Department in publishing a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape, as mandated by PREA. The Department is now publishing this Notice of Proposed Rulemaking to propose such national standards for comment and to respond to the public comments received on the ANPRM.

**DATES:** Written comments must be postmarked on or before April 4, 2011, and electronic comments must be sent on or before midnight Eastern time April 4, 2011.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. OAG–131" on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4252, Washington, DC 20530. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. The Department will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. The Department will not accept any file formats other than those specifically listed here.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4252, Washington, DC 20530; telephone: (202) 514–8059. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

### I. 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* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you still want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket 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 or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also 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 online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please *see* the **FOR FURTHER INFORMATION CONTACT** paragraph.

### II. Background

The Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. 15601 *et seq.,* requires the Attorney General to promulgate regulations that adopt national standards for the detection, prevention, reduction, and punishment of prison rape. PREA established the National Prison Rape Elimination Commission (Commission) to carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States, and to recommend national standards to the Attorney General and to the Secretary of Health and Human Services. The Commission released its recommended national standards in a report dated June 23, 2009, and subsequently disbanded, pursuant to the statute. The Commission's report and recommended national standards are available at *http://www.ncjrs.gov/pdffiles1/226680.pdf.*

The Commission set forth four sets of recommended national standards for eliminating prison rape and other forms of sexual abuse. Each set is applicable to one of the following four confinement settings: (1) Adult prisons and jails; (2) juvenile facilities; (3) community corrections facilities; and (4) lockups (*i.e.,* temporary holding facilities). The Commission recommended that its standards apply to Federal, State, and local correctional and detention facilities (excluding facilities operated by the Department of Defense and the Bureau of Indian Affairs). In addition to the standards themselves, the Commission prepared assessment checklists, designed as tools to provide agencies and facilities with examples of how to meet the standards' requirements; glossaries of key terms; and discussion sections providing explanations for the rationale of the standards and, in some cases, guidance for achieving compliance. These are available at *http://www.ncjrs.gov/pdffiles1/226682.pdf* (adult prisons and jails), *http://www.ncjrs.gov/pdffiles1/226684.pdf* (juvenile facilities), *http://www.ncjrs.gov/pdffiles1/226683.pdf* (community corrections), and *http://www.ncjrs.gov/pdffiles1/226685.pdf* (lockups).

Pursuant to PREA, the final rule adopting national standards "shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission * * * and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider." 42 U.S.C. 15607(a)(2). PREA expressly mandates that the Department shall not establish a national standard "that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. 15607(a)(3). The Department "may, however, provide a list of improvements for consideration by correctional facilities." 42 U.S.C. 15607(a)(3).

The Attorney General established a PREA Working Group, chaired by the Office of the Deputy Attorney General, to review each of the Commission's proposed standards and to help him prepare a draft final rule. The Working Group includes representatives from a wide range of Department components, including the Access to Justice Initiative, the Bureau of Prisons (including the National Institute of Corrections), the Civil Rights Division, the Executive Office for United States Attorneys, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Justice Programs (including the Bureau of Justice Assistance, the Bureau of Justice Statistics (BJS), the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime), the Office on Violence Against Women, and the United States Marshals Service.

The Working Group conducted an in-depth review of the standards proposed by the Commission. As part of that process, the Working Group conducted a number of listening sessions in January and February 2010, at which a wide variety of individuals and groups provided preliminary input prior to the start of the regulatory process. Participants included representatives of State and local prisons and jails, juvenile facilities, community corrections programs, lockups, State and local sexual abuse associations and service providers, national advocacy groups, survivors of prison rape, and members of the Commission. The Department also consulted with the Department of Homeland Security's Office for Civil Rights and Civil Liberties and with U.S. Immigration and Customs Enforcement (ICE).

Because PREA prohibits the Department from establishing a national standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities, the Working Group carefully examined the potential cost implications of the standards proposed by the Commission. As part of that process, the Department commissioned an independent contractor to perform a cost analysis of the Commission's proposed standards, which was received on June 18, 2010.

The Department has also worked to address those recommendations put forth by the Commission that require action outside of the context of PREA to accomplish. For example, the Department is in the process of developing a companion to the 2004 "National Protocol for Sexual Assault Medical Forensic Examinations" that will be customized to the conditions of confinement. In addition, via a separate rulemaking process, the Department intends to propose removing the current ban on Victims of Crime Act funding for treatment and rehabilitation services for incarcerated victims of sexual abuse.

## III. The Department's Prior Request for Comments

On March 10, 2010 (75 FR 11077), the Department published an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public input on the Commission's proposed national standards. Approximately 650 comments were received on the ANPRM, including comments from current or formerly incarcerated individuals, county sheriffs, State departments of correction, private citizens, professional organizations, social service providers, and advocacy organizations concerned with issues of prison rape, sexual violence, discrimination, and juvenile justice.

The Department of Justice appreciates the interest and insight reflected in the many submissions and communications and has considered them carefully.

In general, the commenters supported the broad goals of PREA and the overall intent of the Commission's recommendations. Some commenters, particularly those whose responsibilities involve the care and custody of inmates or juvenile residents, expressed concern that the Commission's recommended national standards implementing PREA would impose unduly burdensome costs on already tight State and local government budgets. Other commenters, particularly advocacy groups concerned with protecting the health and safety of inmates and juvenile residents, expressed concern that the Commission's standards did not go far enough, and, therefore, would not fully achieve PREA's goals. In preparing its proposed standards, the Department carefully considered each and every comment, keeping in mind both the goal of the statute and its mandate not to impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The following section includes additional discussion of comments relevant to particular standards.

## IV. Overview of PREA National Standards

Rape and sexual abuse are reprehensible, destructive, and illegal in any setting. Such acts are particularly damaging in the correctional environment, where the power dynamic is heavily skewed against victims and recourse is often limited. Until recently, however, this has been widely viewed as an inevitable aspect of imprisonment within the United States. This view is not only incorrect but incompatible with American values. Based on the Department's analysis of data compiled by BJS, approximately 200,000 adult prisoners and jail inmates suffered some form of sexual abuse while incarcerated during 2008. *See* BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09* (Aug. 2010).[1] This suggests 4.4% of the prison population and 3.1% of the jail population within the United States suffered sexual abuse during that year.[2] In some prisons, nearly 9% of the population reported abuse within that time; in some jails the corresponding rate approached 8%.[3]

In juvenile facilities, the numbers are similarly troubling. At least 17,100 adjudicated or committed youth (amounting to some 12% of the total population in juvenile detention facilities) reported having suffered sexual abuse within 12 months of arriving at their facility, with rates as high as 36% in specific facilities. *See* BJS, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09* (Jan. 2010), at 1, 4.[4] These numbers

[1] This total includes the cross-sectional number covered in BJS surveys plus the number of estimated victims released in the twelve months prior to the survey. For methodology, *see* Initial Regulatory Impact Analysis (IRIA) at 9, available at *http://www.ojp.usdoj.gov/programs/pdfs/prea_nprm_iria.pdf*.

[2] *See id.* at 6.

[3] *See id.* at 8.

[4] This total includes the cross-sectional number covered in BJS surveys plus the number of estimated victims released in the twelve months prior to the survey. It includes adjudicated/committed youth only. For methodology, *see* IRIA at 9.

indicate that improvements can and must be made.

Neither the Commission nor the Department began its work on a blank slate. Many correctional administrators have developed and implemented policies and practices to more effectively prevent and respond to prison rape. The Department applauds these efforts, and views them as an excellent first step. However, a national effort is needed to accomplish PREA's goals. Protection from sexual abuse should not depend on where an individual is incarcerated: It must be universal.

The Commission recommended standards to the Department after several years of investigating the prevalence and nature of sexual abuse in incarceration settings and exploring correctional best practices in addressing it. The Department has built on the Commission's work and has adopted the overall structure of its standards as well as a significant majority of its specific recommendations. The Department's proposed rule echoes the Commission's recommendations in devising four sets of standards tailored to specific types of confinement facilities. Each set consists of the same eleven categories used by the Commission: Prevention planning, responsive planning, training and education, screening for risk of sexual victimization and abusiveness, reporting, official response following an inmate report, investigations, discipline, medical and mental care, data collection and review, and audits.

The scope and content of the Department's standards do differ substantially from the Commission's proposals in a variety of areas. After careful consideration, the Department has made revisions to each of the Commission's recommended standards. At all times, the Department has weighed the logistical and financial feasibility of each standard against its benefits. The Department has found invaluable the comments received on the ANPRM, and expects that comments in response to this proposed rule will provide further insights.

*Definitions.* Sections 115.5 and 115.6 provide definitions for key terms. The Department has largely relied on the Commission's definitions in the Glossary sections that accompanied the Commission's four sets of standards, but has made a variety of adjustments and has eliminated definitions for various terms that either do not appear in the Department's proposed standards or whose meaning is sufficiently clear so as not to need defining. In addition, the Department has included definitions in some of the standards themselves. Below is an explanation for key definitions modified or added by the Department:

*Community confinement facility.* The Commission recommended a set of standards for community corrections, which it defined as follows: "Supervision of individuals, whether adults or juveniles, in a community setting as a condition of incarceration, pretrial release, probation, parole, or post-release supervision. These settings would include day and evening reporting centers." The Department believes that to the extent this definition includes supervision of individuals in a non-residential setting, it exceeds the scope of PREA's definitions of jail and prison, which include only "confinement facilit[ies]." 42 U.S.C. 15609(3), (7). Accordingly, the proposed rule does not reference community corrections, but instead refers to "community confinement facilities." The proposed rule defines this term nearly identically to the definition provided in regulations promulgated by the Department to govern the Federal Bureau of Prisons. *See* 28 CFR 570.20(a). The term includes a range of facilities in which offenders or defendants reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while pursuing employment, education, or other facility-approved programs during non-residential hours. A similar definition appears in Federal Sentencing Guideline 5F1.1 and, incorporated by reference, in 18 U.S.C. 3621(g)(2).

*Employee, contractor, volunteer, and staff.* The proposed rule clarifies these terms to conform more closely to their traditional definitions—*e.g.,* employees are only those persons who work directly for the agency or facility. The term "staff" is used interchangeably with "employees."

*Inmate, detainee, and resident.* The proposed standards use these three terms to refer to persons confined in the four types of covered facilities. The proposed standards for prisons and jails refer to persons incarcerated or detained therein as "inmates." For simplicity, the proposed standards for lockups refer to all persons detained therein as "detainees," including persons who have already been adjudicated. The proposed standards for juvenile facilities and for community confinement facilities refer to all persons housed therein as "residents."

*Jail and prison.* Although the Commission did not define these terms, the Department believes that definitions are necessary, especially because the Department's proposed standards modify the Commission's recommended standards in certain respects to distinguish requirements applicable to jails from requirements applicable to prisons. The definitions provided in the proposed rule generally track the prevailing definitions of jails and prisons, based upon the primary use of each facility. If a majority of a facility's inmates are awaiting adjudication of criminal charges, serving a sentence of one year or less, or awaiting post-adjudication transfer to a different facility, then the facility is categorized as a jail, regardless of how the facility may label itself. As discussed in greater depth below, these terms do not encompass facilities that are primarily used for the civil detention of aliens pending removal from the United States.

*Question 1: The Department solicits comments regarding the application of this definition to those States that operate* "*unified systems*"*—i.e., States with direct authority over all adult correctional facilities, as opposed to the more common practice of jails being operated by counties, cities, or other municipalities. States that operate unified systems may be less likely to adhere to the traditional distinctions between prisons and jails, and may operate facilities that are essentially a mixture of the two. Do the respective definitions of jail and prison, and the manner in which the terms are used in the proposed standards, adequately cover facilities in States with unified systems? If not, how should the definitions or standards be modified?*

*Juvenile and juvenile facility.* The proposed rule defines "juvenile" as a person under the age of 18, unless defined otherwise under State law, and defines "juvenile facility" as a facility primarily used for the confinement of juveniles. Both definitions are new; the Commission did not define these terms.

*Lockup.* With small clarifying modifications, the proposed rule adopts the Commission's definition of lockup, which includes temporary holding facilities under the control of a law enforcement, court, or custodial officer.

*Sexual abuse and related terms.* In its ANPRM, the Department queried whether the standards should refer to "rape" or to "sexual abuse." Most commenters suggested that the Department refer to "sexual abuse." All advocacy groups that responded to this question recommended using "sexual abuse," and correctional agencies were split on the question. Proponents of the term sexual abuse noted that it captures a broader range of sexual victimization than rape, and noted that PREA defines rape expansively, *see* 42 U.S.C. 15609(9)–(12), to include a range of actions that more closely resembles the

Commission's proposed definition of sexual abuse rather than the traditional definition of rape. For example, PREA includes "sexual fondling" in its definition of rape, *see* 42 U.S.C. 15609(9), (11), even though that term is typically associated with sexual abuse rather than with rape. Proponents of the term rape argued that referring to sexual abuse more accurately captures the intent of the statute and the scope of behavior that the regulations should address.

The Department's proposed standards use the term sexual abuse, which the Department believes is a more accurate term to describe the behaviors that Congress aimed to eliminate. However, the proposed definition of sexual abuse removes sexual harassment from its scope. Several correctional agencies commented that including sexual harassment within the scope of sexual abuse would greatly expand the obligations of correctional agencies and would require responsive actions not commensurate to the harm caused by sexual harassment. The Department agrees, but has rejected the recommendation of some commenters that sexual harassment be removed entirely from the scope of the standards. Although PREA does not reference sexual harassment, it authorizes the Commission, and by extension the Attorney General, to propose standards relating to "such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape." 42 U.S.C. 15606(e)(2)(M). The Department believes that it is appropriate that certain standards reference sexual harassment in order to combat what may be a precursor to sexual abuse.

With the exception of the omission of sexual harassment, the Department's proposed definition of sexual abuse substantively resembles the Commission's recommended definition. The format and wording, however, have been revised to conform more closely to the definitions used by BJS in its Survey of Sexual Violence, as several commenters suggested. The Department hopes that harmonizing these definitions, to the extent possible, will provide greater clarity to correctional agencies.

The proposed definition of sexual abuse excludes consensual activity between inmates, detainees, or residents, but does not exclude consensual activity with staff. The Department, like the Commission, believes that the power imbalance in correctional facilities is such that it is impossible to know if an incarcerated person truly "consented" to sexual activity with staff.

*Prevention Planning: Sections 115.11, 115.111, 115.211, 115.311, 115.12, 115.112, 115.212, 115.312, 115.13, 115.113, 115.213, 115.313, 115.14, 115.114, 115.214, 115.314, 115.15, 115.115, 115.215, 115.315, 115.16, 115.116, 115.216, 115.316, 115.17, 115.117, 115.217, and 115.317* (compare to the Commission's PP standards). Like the Commission, the Department believes it is important to establish what actions facilities are expected to take to prevent sexual abuse.

Sections 115.11, 115.111, 115.211, and 115.311 (compare to the Commission's PP–1 standard), require that agencies establish a written zero-tolerance policy toward sexual abuse and harassment. The proposed standard clarifies that, in addition to mandating zero tolerance, the policy must outline the agency's approach to preventing, detecting, and responding to such conduct.

This standard also mandates that agencies employ or designate an upper-level, agency-wide PREA coordinator to oversee efforts to comply with PREA standards. In all agencies that operate facilities whose total rated capacity exceeds 1,000 inmates,[5] this agency-wide PREA coordinator must be a full-time position. Other agencies may designate this role as a part-time position or may assign its functions to an existing full-time or part-time employee.

Several commenters criticized that the Commission's proposed requirement that the PREA coordinator report directly to the agency head. These commenters expressed concern about setting the position at an unreasonably high level within the agency, which could require it to become a political appointment and thus subject to frequent turnover. The Department's proposed standard requires that the position be "upper-level" but does not require that the coordinator report directly to the agency head. In addition, some correctional agencies expressed concern that mandating a full-time coordinator for jails that house only 500 inmates, as the Commission proposed, would impose too great a burden. The Department's proposed standard instead mandates a full-time coordinator only for agencies that operate facilities whose total rated capacity exceeds 1,000 inmates. In addition, agencies whose total capacity exceeds 1,000 inmates must also designate an existing full-time or part-time employee at each facility to serve as that facility's PREA coordinator.

The intent is to tailor this requirement to the varying needs and capacities of agencies and facilities: Requiring large agencies to dedicate an employee to coordinate PREA efforts full-time, while allowing smaller agencies, and individual facilities within large agencies, to assign such duties as part of an employee's broader portfolio, thus ensuring a "point person" who is responsible for PREA efforts.

*Question 2: Should the Department modify the full-time coordinator requirement to allow additional flexibility, such as by requiring only that PREA be the coordinator's primary responsibility, or by allowing the coordinator also to work on other related issues, such as inmate safety more generally?*

Sections 115.12, 115.112, 115.212, and 115.312 (compare to the Commission's PP–2 standard), require that agencies that contract with private entities for the confinement of inmates include the entity's obligation to comply with the PREA standards in new contracts or contract renewals. Several agency commenters expressed concern that the Commission's proposed requirement that an agency "monitor the entity's compliance with these standards as part of its monitoring of the entity's performance" would impose too great a financial burden. The Department's proposed standard modifies slightly the Commission's proposal by requiring only that new contracts or renewals "shall provide for agency contract monitoring to ensure that the contractor is complying with PREA standards." The revision is intended to indicate that the agency is not required to conduct audits of its contract facilities but rather must include PREA as part of its routine monitoring of compliance with contractual obligations.

*Question 3: Should the final rule provide greater guidance as to how agencies should conduct such monitoring? If so, what guidance should be provided?*

Sections 115.13, 115.113, 115.213, and 115.313 (compare to the Commission's PP–3 and PP–7 standards) govern the supervision and monitoring of inmates. The Department has combined the Commission's proposed PP–3 and PP–7 standards into one standard, in recognition that direct staff supervision and video monitoring

[5] As noted above, the proposed standards refer to "inmates," "detainees," and "residents," depending upon the type of confinement facility. For simplicity, the explanation of the standards refers to all persons confined within any type of facility as "inmates" except where specifically discussing lockups, juvenile facilities, or community confinement facilities.

are two methods of achieving one goal: Reducing the opportunity for abuse to occur unseen. The Department recognizes that different agencies rely on staffing and technology to varying degrees depending upon their specific characteristics. Accordingly, the Department believes that these issues are best considered together.

The Department is mindful that staffing and video-monitoring systems are both expensive. Staff salaries and benefits are typically the largest item in a correctional agency's budget, *see, e.g.,* National Institute of Corrections, *Staffing Analysis: Workbook for Jails* (2d ed.) at 2, and economies of scale are difficult to obtain: Increasing staffing by 25% is likely to increase staff costs by 25%. Likewise, video-monitoring systems may be beyond the financial reach of some correctional agencies, although the costs of such systems may diminish in future years as technology advances.

Various agency commenters criticized the first sentence of the Commission's PP–3 standard: "Security staff provides the inmate supervision necessary to protect inmates from sexual abuse." Commenters suggested that the Commission's recommended standard did not provide appropriate guidance as to what level of supervision would be "necessary to protect inmates from sexual abuse," and that it did not indicate whether compliance would be measured *ex ante,* by reviewing staffing levels alone, or *ex post,* by determining that instances of sexual abuse could have been prevented by additional staffing.

The Department recognizes the importance of staffing levels in combating sexual abuse, and believes that the correctional community shares this view. *See, e.g.,* American Correctional Association Public Correctional Policy on Offender on Offender Sexual Assault (Jan. 12, 2005) (recommending that agencies "[m]aintain adequate and appropriate levels of staff to protect inmates against sexual assault"). Although proper supervision and monitoring cannot eliminate sexual abuse, it can play a key role in reducing opportunities for it to occur. In addition, inadequate staffing can be a contributing factor in a judicial determination that conditions of confinement violate the Constitution. *See, e.g., Krein* v. *Norris,* 309 F.3d 487, 489–92 (8th Cir. 2002); *Ramos* v. *Lamm,* 639 F.2d 559, 573–74 (10th Cir. 1980). In several of the Department's investigations of correctional facilities under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 *et seq.,* for engaging in a pattern or practice of violating inmates' Federal rights, the terms of consent decrees and settlements have included specific remedial measures aimed at improving the adequacy of staffing.

At the same time, however, the Department recognizes that determining adequate staffing levels is a complicated, facility-specific enterprise. The appropriate number of staff depends upon a variety of factors, including (but not necessarily limited to) the physical layout of a facility, the security level and gender of the inmates, whether the facility houses adults or juveniles, the length of time inmates reside in the facility, the amount of programming that the facility offers, and the facility's population density (*i.e.,* comparing the number of inmates to the number of beds or square feet). In addition, the facility's reliance on video monitoring and other technology may reduce staffing requirements, as long as the facility employs sufficient staff to monitor the video feeds or other technologies such as call buttons or sensors. The viability of technology may depend upon, among other factors, the characteristics of the incarcerated population. Administrators of juvenile facilities, for example, are typically more reluctant to rely heavily on video monitoring given the staff-intensive needs of their residents.

Due to the complex interaction of these factors, the Department does not believe that it is possible to craft a formula that would set appropriate staffing levels for all populations—although the Department is aware that some States do set such levels for juvenile facilities. Nor is it likely that an auditor would be able to determine the appropriate staffing level in the limited amount of time available to conduct an audit. Relying on reported incidents of sexual abuse to determine appropriate staffing levels is also an imperfect method given the uncertainty as to whether an incident will be reported. Facilities where inmates feel comfortable reporting abuse, and where investigations are conducted effectively, may be more likely than other facilities to experience substantiated allegations of sexual abuse, even if the facility is no less safe than its counterparts. For this reason, the Department has opted not to adopt general across-the-board performance-based standards, as proposed by some commenters.

Accordingly, the Department is of the view that any standard that governs supervision and monitoring must protect inmates while providing sufficient clarity as to its requirements, recognizing that the adequacy of supervision and monitoring depends on several factors that interact differently for each facility, and accounting for the costs involved in employing additional staff and in purchasing and deploying additional technology.

The Department believes that, at a minimum, such a standard must impose at least three requirements. First, an agency must make an assessment of adequate staffing levels, taking into account its use, if any, of video monitoring or other technology. The fact that multiple factors bear on the adequacy of staffing and monitoring is no barrier to requiring an agency to conduct such an assessment for each of its facilities. Second, an agency must devise a plan for how to best protect inmates from sexual abuse should staffing levels fall below an adequate level. Third, an agency must reassess at least annually such adequate staffing levels, as well as the staffing levels that actually prevailed during the previous year, and must also reassess its use of video monitoring systems and other technologies.

The Department assumes that most agencies already engage in similar inquiries; the purpose of mandating such inquiries within these standards is to institutionalize the practice of assessing staffing and monitoring in the context of considering how staffing and monitoring contribute to efforts to combat sexual abuse.

The Department is interested in receiving comments on whether and to what extent this standard should include additional or alternative requirements, and poses various questions below designed to elicit such comments. The Department has already received comments from the former Commissioners themselves regarding possible options. Following a meeting between the Department and several of the former Commissioners on August 4, 2010, that included discussion of the Commission's PP–3 and PP–7 standards, the former Commissioners sent the Department a memorandum dated September 28, 2010, that discussed possible revisions to this standard. The former Commissioners noted the possibility of replacing the first sentence of the PP–3 standard with the following: "Agency heads must establish in writing the staffing requirements for each shift at each facility to keep inmates safe from sexual abuse and must designate the priority posts at each facility that must be filled on each shift regardless of staff shortages or absences." In addition, the Commissioners noted that the PP–7 standard could be replaced with the following: "The agency uses video monitoring systems, if available, or other appropriate technology to

supplement its sexual abuse prevention, detection, and response efforts. Because video monitoring and other appropriate technology can contribute to prevention [and] detection of sexual abuse, the agency assesses at least annually the feasibility of acquiring new or additional technology. Compliance is measured by ensuring that the facility has developed a plan for securing such technology as funds become available."

*Question 4: Should the standard require that facilities actually provide a certain level of staffing, whether determined qualitatively, such as by reference to "adequacy," or quantitatively, by setting forth more concrete requirements? If so, how?*

*Question 5: If a level such as "adequacy" were mandated, how would compliance be measured?*

*Question 6: Various States have regulations that require correctional agencies to set or abide by minimum staffing requirements. To what extent, if any, should the standard take into account such State regulations?*

*Question 7: Some States mandate specific staff-to-resident ratios for certain types of juvenile facilities. Should the standard mandate specific ratios for juvenile facilities?*

*Question 8: If a level of staffing were mandated, should the standard allow agencies a longer time frame, such as a specified number of years, in order to reach that level? If so, what time frame would be appropriate?*

*Question 9: Should the standard require the establishment of priority posts, and if so, how should such a requirement be structured and assessed?*

*Question 10: To what extent can staffing deficiencies be addressed by redistributing existing staff assignments? Should the standard include additional language to encourage such redistribution?*

*Question 11: If the Department does not mandate the provision of a certain level of staffing, are there other ways to supplement or replace the Department's proposed standard in order to foster appropriate staffing?*

*Question 12: Should the Department mandate the use of technology to supplement sexual abuse prevention, detection, and response efforts?*

*Question 13: Should the Department craft the standard so that compliance is measured by ensuring that the facility has developed a plan for securing technology as funds become available?*

*Question 14: Are there other ways not mentioned above in which the Department can improve the proposed standard?*

The proposed standard also adds a requirement that prisons and jails with rated capacity in excess of 500 inmates develop a policy of requiring supervisors to conduct unannounced rounds. The Department believes that requiring such rounds is an appropriate measure to deter staff misconduct, in recognition of the great responsibility entrusted to correctional staff, who often perform their duties unaccompanied by colleagues. The proposed standard does not mandate how frequently such rounds must be conducted, in recognition that the frequency of unannounced rounds may be less important than the deterrent effect of knowing that such rounds may be conducted at any time. However, the Department believes that unannounced rounds should be conducted with reasonable frequency to ensure that such rounds have a sufficient deterrent effect, and solicits comments on this issue.

*Question 15: Should this standard mandate a minimum frequency for the conduct of such rounds, and if so, what should it be?*

Finally, the proposed standard omits language from the Commission's recommended PP–3 standard regarding post-incident reviews and taking corrective action. Because the language in those standards cross-references two of the Commission's recommended standards for data collection and review (DC–1 and DC–3), the Department has included comparable language in the proposed standards that correspond to the Commission's DC–1 and DC–3 standards—*i.e.,* §§ 115.86, 115.186, 115.286, and 115.386 (DC–1) and §§ 115.88, 115.188, 115.288, and 115.388 (DC–3).

Sections 115.14, 115.114, 115.214, and 115.314 (compare to the Commission's PP–4 standard) address the limits on cross-gender searches. The proposed standard diverges significantly from the Commission's recommendations in its PP–4 standard. The Commission proposed strict limits on cross-gender strip searches, visual body cavity searches, pat-down searches, and viewing of inmates nude or performing bodily functions. Specifically, the Commission would permit the first two only in case of emergency, and the latter two in emergencies or "other extraordinary or unforeseen circumstances." The Commission recommended such restrictions in order to "to protect the privacy and dignity of inmates and to reduce opportunities for staff-on-inmate sexual abuse." Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails ("Prison/Jail Standards"), available at *http://www.ncjrs.gov/pdffiles1/226682.pdf,* at 12.

The Department received numerous comments on the Commission's proposed limits on cross-gender pat-down searches. A large number of agencies objected to the Commission's proposal on the ground that it would require agencies either to hire significant numbers of additional male staff or to lay off significant numbers of female staff, due to their overwhelmingly male inmate population and substantial percentage of female staff. In addition, many agencies expressed concern that the necessary adjustments to their workforce could violate Federal or State equal employment opportunities laws. Several advocacy groups, on the other hand, expressed support for the Commission's proposal.

The Department recognizes that pat-down searches are critical to ensuring facility security and yet are often perceived as intrusive by inmates. Ideally, all pat-down searches would be conducted professionally and diligently by staff members of the same sex as the inmate. However, the Department is concerned about the high cost of imposing such a general requirement, and the concomitant effect on employment opportunities for women. The Department agrees with the Commission that "cross-gender supervision, in general, can prove beneficial in certain confinement settings." Prison/Jail Standards at 12. Although the Commission stated that it "in no way intends for this standard to limit employment (or post assignment) opportunities for men or women," *id.,* the Department is of the view that implementing a general prohibition on cross-gender pat-down searches cannot be achieved in many correctional systems without limiting such opportunities. In sum, the Department believes that the potential benefits of eliminating cross-gender pat-down searches do not justify the costs, financial and otherwise, of imposing such a rule across the board.

The proposed standard would retain the Commission's recommendation as applied to juvenile facilities, which tend to conduct pat-down searches less frequently. Indeed, many juvenile facilities already ban cross-gender pat-down searches absent exigent circumstance. In addition, the Department proposes that adult prisons, jails, and community confinement facilities not allow cross-gender pat-down searches of inmates who have previously suffered cross-gender sexual abuse while incarcerated. The Department agrees with the comment of

the New York Department of Correctional Services, which has implemented such a rule in its facilities, that allowing such an exemption is a viable and proportionate approach to protecting those inmates most likely to suffer emotional harm during cross-gender pat-downs.

The proposed standard also mandates that agencies train security staff in how to conduct cross-gender pat-down searches in a professional and respectful manner, and in the least intrusive manner possible consistent with security needs. Because any pat-down search carries the potential for abuse, the Department believes that training in the proper conduct of such searches is a cost-effective approach to combating problems that might arise in either a cross-gender or same-gender pat-down search.

*Question 16: Should the final rule contain any additional measures regarding oversight and supervision to ensure that pat-down searches, whether cross-gender or same-gender, are conducted professionally?*

Agency commenters' concerns about banning cross-gender pat-down searches absent exigent circumstances did not extend to a similar rule for strip searches and visual body cavity searches. The Department's proposed standard incorporates that aspect of the Commission's standard PP–4 as drafted, with two modifications. First, the proposed standard exempts such cross-gender searches when conducted by medical practitioners: The Department believes that a medical practitioner, even of the opposite gender, is more likely to conduct such searches with appropriate sensitivity. Second, the standard would require facilities to document all such cross-gender searches, whether conducted under emergency circumstances or by medical staff under non-emergency circumstances.

The Department received fewer comments on the Commission's proposed ban on cross-gender viewing of inmates who are nude or performing bodily functions. Some agencies expressed concern about being able to retrofit older facilities, while others commented that the Commission's language could preclude officers from making unannounced rounds in units where toilets are located within cells. To accommodate the latter concern, the proposed standard modifies the Commission's recommendation by exempting cross-gender viewing when incidental to routine cell checks. The Department believes that concerns about retrofitting can be accommodated by constructing privacy panels, reassigning staff, or other appropriate measures in the limited circumstances where such retrofitting is not possible.

Sections 115.14, 115.114, 115.214, and 115.314 also bar examinations of transgender inmates to determine gender status unless such status is unknown and the examination is conducted in private by a medical practitioner. The Department's proposed standard adopts the Commission's restrictions, to which no commenter objected. Some commenters would impose further restrictions and ban all examinations to determine gender status, but the Department believes that a complete ban could preclude examinations where necessary to ensure the safety and security of the inmate examined and of other inmates and staff.

Sections 115.15, 115.115, 115.215, and 115.315 (compare to the Commission's PP–5 standard) govern the accommodation of inmates with disabilities and inmates with limited English proficiency (LEP). As the Commission noted, "[t]he ability of all inmates to communicate effectively and directly with staff, without having to rely on inmate interpreters, is crucial for ensuring that they are able to report sexual abuse as discreetly as possible." Prison/Jail Standards at 13. The Department's proposed standard, like the PP–5 standard, requires that agencies develop methods to ensure that LEP inmates and inmates with disabilities (*e.g.,* inmates who are deaf, hard of hearing, or blind and inmates with low vision, intellectual, psychiatric, speech, and mobility disabilities) are able to report sexual abuse and sexual harassment to staff directly, and that agencies make accommodations to convey sexual abuse policies orally to inmates who have intellectual disabilities or limited reading skills or who are blind or have low vision. Unlike the Commission's proposal, the proposed standard allows for the use of inmate interpreters in exigent circumstances, recognizing that in certain circumstances such use may be unavoidable. Some commenters would require facilities to ensure that inmates with disabilities and LEP inmates be able to communicate with staff throughout the entire investigation and response process. The Department solicits feedback on this question.

The Department also notes that agencies receiving Federal financial assistance are required under Federal civil rights laws to meet obligations to inmates with disabilities or who are LEP. The Department encourages all agencies to refer to the relevant statutes, regulations, and guidance when determining the extent of their obligations.

The Americans with Disabilities Act (ADA) requires State and local governments to make their services, programs, and activities, accessible to individuals with all types of disabilities. *See* 42 U.S.C. 12132; 28 CFR 35.130, 35.149–35.151. The ADA also requires State and local governments to ensure that their communications with individuals with disabilities affecting communication (blindness, low vision, deafness, or other speech or hearing disability) are as effective as their communications with individuals without disabilities. *See* 28 CFR 35.160–35.164. In addition, the ADA requires each State and local government to make reasonable modifications to its policies, practices, and procedures when necessary to avoid discrimination against individuals with disabilities, unless it can demonstrate that making the modifications would fundamentally alter the nature of the relevant service, program, or activity. *See* 28 CFR 35.130(b)(7). These nondiscrimination obligations apply to all correctional and detention facilities operated by or on behalf of State or local governments. *See Pennsylvania Dep't of Corr.* v. *Yeskey,* 524 U.S. 206, 209–10 (1998).

Pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and implementing regulations, all State and local agencies that receive Federal financial assistance must provide LEP persons with meaningful access to all programs and activities. *See Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency,* 65 FR 50123. Pursuant to Executive Order 13166 of August 11, 2000, each agency providing Federal financial assistance is obligated to draft Title VI guidance regarding LEP persons that is specifically tailored to the agency's recipients of Federal financial assistance. The Department's guidance for its recipients includes a discussion of LEP issues in correctional and detention settings. *See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* 67 FR 41455.

*Question 17: Should the final rule include a requirement that inmates with disabilities and LEP inmates be able to communicate with staff throughout the entire investigation and response process? If such a requirement is included, how should agencies ensure communication throughout the process?*

Sections 115.16, 115.116, 115.216, and 115.316 (compare to the Commission's PP–6 standard) govern hiring and promotion decisions. Like the Commission's proposal, the proposed standard would restrict agencies' ability to hire employees who previously engaged in sexual abuse. Several commenters expressed concern about the burden that would be imposed by requiring background checks on any employee being considered for promotion. The proposed standard would not mandate such checks but instead would require agencies to conduct criminal background checks of current employees at least every five years (as the Federal Bureau of Prisons currently does) or have in place a system for otherwise capturing such information for current employees.

Sections 115.17, 115.117, 115.217, and 115.317 constitute a new standard requiring agencies to take into account how best to combat sexual abuse when designing or expanding facilities and when installing or updating video monitoring system or other technology. The Department believes that it is appropriate to require agencies to consider the impact of their physical and technological upgrades. Indeed, the American Correctional Association has recommended that, as a means of deterring sexual abuse, agencies should "[p]romote effective facility design that enables direct lines of sight within housing units." American Correctional Association Public Correctional Policy on Offender on Offender Sexual Assault (Jan. 12, 2005). The sentence in this standard regarding technology is adopted from a suggestion made in a comment by the New York Department of Correctional Services.

*Response Planning: Sections 115.21, 115.121, 115.221, 115.321, 115.22, 115.222, 115.322, 115.23, 115.123, 115.223, and 115.323* (compare to the Commission's RP standards). Like the Commission, the Department believes it is important to establish standards that address how facilities are expected to respond once an incident of sexual abuse occurs.

Sections 115.21, 115.121, 115.221, and 115.321 (compare to the Commission's RP–1 standard) set forth an evidence protocol to ensure all usable physical evidence is preserved for administrative or criminal proceedings. The standard makes clear that prompt exams are needed both to identify medical and mental health needs and to minimize the loss of evidence. In balancing these two interests, facilities should prioritize treating a victim's acute medical and mental health needs before collecting evidence. Like the Commission, the Department believes that its Office on Violence Against Women's *National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,* a revised version of which will be published later this year, provides the best set of guidelines for conducting these exams. The proposed standard expands the Commission's recommendation by requiring access to exams not only in cases of penetration but whenever evidentiarily or medically appropriate. For example, if an inmate alleges that she was choked in the course of a sexual assault that did not result in penetration, a forensic exam might provide evidence to support or refute her contention.

This standard takes into account the fact that some agencies are not responsible for investigating alleged sexual abuse within their facilities and that those agencies may not be able to dictate the conduct of investigations conducted by outside entities. In such situations, the proposed standard requires the agency to inform the investigating entity about the standard's requirements with the hope that the investigating entity will look to the standard as a best-practices guideline. In addition, the standard applies to any outside State entity or Department of Justice component that investigates such allegations.

In all settings except lockups, the proposed standard requires that the agency offer all sexual abuse victims access to a person either inside or outside the facility who can provide support to the victim. Specifically, the proposed standard requires that the agency make available to the victim either a victim advocate from a community-based organization that provides services to sexual abuse victims or a "qualified staff member," defined as a facility employee who has received education concerning sexual assault and forensic examination issues in general. A victim advocate or qualified staff member must be made available to accompany and support the victim through the forensic medical exam process and the investigatory process, and to provide emotional support, crisis intervention, information and referrals, as needed. This requirement is intended to ensure that victims understand the forensic exam and investigative processes and receive support and assistance at an emotionally difficult time. Several agency commenters expressed concern about the burden imposed by this requirement. The Department notes that it has revised the Commission's standard in order to clarify that an existing employee with appropriate education can fulfill this role, thus reducing the burden on the facility while ensuring support for the victim.

Lockups are excluded from this requirement for three reasons. First, because lockups are leanly staffed, complying with this requirement could well require the hiring of an additional staff person. Second, there is little evidence of a significant amount of sexual abuse in lockups that would warrant such expenditure. Third, lockup inmates are highly transient, and thus in some cases, victims of sexual abuse already will have been transferred to a jail before the forensic exam is conducted.

*Question 18: Do the standards adequately provide support for victims of sexual abuse in lockups upon transfer to other facilities, and if not, how should the standards be modified?*

Sections 115.22, 115.222, and 115.322 (compare to the Commission's RP–2 standard) govern the agreements that facilities enter into with public service and community providers. The goal of the proposed standard is to allow inmates the opportunity to report instances of sexual abuse and sexual harassment to an entity outside of the agency. The Department's proposed standard exempts agencies that allow reporting to quasi-independent internal offices, such as inspectors general. In addition, the proposed standard requires that agencies maintain or attempt to enter into agreements with community service providers who can provide inmates confidential emotional support services related to sexual abuse. Some commenters argued that this standard should expressly mandate specific assistance for LEP inmates. The Department encourages agencies to make efforts to allow such inmates to partake in the services offered under this standard and solicits comments on whether such a mandate should be included.

*Question 19: Should this standard expressly mandate that agencies attempt to enter into memoranda of understanding that provide specific assistance for LEP inmates?*

The proposed standards do not include the Commission's recommendations that agencies attempt to enter into memoranda of understanding with outside investigative agencies (the Commission's RP–3 standard) and with prosecutorial agencies (the Commission's RP–4 standard). A number of agency commenters expressed concern that these requirements would impose significant burdens, especially in State systems

where investigations and prosecutions are conducted by numerous different agencies at the county or municipal level. The Department recognizes that such memoranda of understanding have proven to be valuable for certain agencies, and encourages agencies to explore the viability of attempting to enter into such agreements. However, due to burden concerns, the Department does not believe that agencies should be required to make such efforts. Instead, §§ 115.23, 115.123, 115.223, and 115.323 mandate that each agency must have in place policies to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations. The policy must be published on the agency's Web site, and, if a separate entity is responsible for investigating criminal investigations, the Web site must delineate the responsibilities of the agency and the investigating entity. The Department's proposed standard also requires that that any State entity or Department of Justice component that conducts such investigations must have policies in place governing the conduct of such investigations.

*Training and Education: Sections 115.31, 115.131, 115.231, 115.331, 115.32, 115.132, 115.232, 115.332, 115.33, 115.233, 115.333, 115.34, 115.134, 115.234, 115.334, 115.35, 115.235, and 115.335* (compare to the Commission's TR standards). Like the Commission, the Department believes that training for all individuals who have contact with inmates is a key component in combating sexual abuse. Training will create awareness of the issue of sexual abuse in facilities, clarify staff responsibilities, ensure that reporting mechanisms are known to staff and populations in custody, and provide specialized information for staff with key roles in responding to sexual abuse. These standards are substantively similar to those offered by the Commission. In addition, each standard in this category requires documentation that the required training was provided and, for staff training, that the training was understood. In order to facilitate compliance, the Department has revised the Commission's recommendations to allow electronic documentation.

Sections 115.31, 115.131, 115.231, and 115.331 (compare to the Commission's TR–1 standard) require that all employees who have contact with inmates receive training concerning sexual abuse in facilities, with refresher training to be provided on an annual basis thereafter. The proposed standard includes all training topics proposed by the Commission, plus training in how to avoid inappropriate relationships with inmates. In addition, the Department has added a requirement that the training be tailored to the gender of the inmates at the employee's facility, that training cover effective and professional communication with lesbian, gay, bisexual, transgender, and intersex residents, and that training in juvenile facilities be tailored to the juvenile setting.

Due to the limited detention operations of lockups, § 115.131, consistent with the Commission's corresponding TR–1 standard, does not specify training requirements beyond requiring that the agency train all employees and volunteers who may have contact with lockup detainees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures, and to communicate effectively and professionally with all detainees.

*Question 20: Should the Department further specify training requirements for lockups and if so, how? Would lockups be able to implement such training in a cost-effective manner via in-person training, videos, or Web-based seminars?*

Sections 115.32, 115.232, and 115.332 (compare to the Commission's TR–2 standard) require training for contractors and volunteers concerning sexual abuse. The Department agrees with the Commission that training must not be limited to employees, given that contractors and volunteers often interact with inmates on a regular, sometimes daily, basis. With regard to lockups, the Department mandates in § 115.132 that attorneys, contractors, and any inmates who work in the lockup must be informed of the agency's zero-tolerance policy regarding sexual abuse. (As noted above, § 115.131 governs training of lockup volunteers.)

Sections 115.33, 115.233, and 115.333 (compare to the Commission's TR–3 standard) require that information about combating sexual abuse provided to individuals in custody upon intake and that comprehensive education be provided within 30 days of intake. Like the Commission, the Department believes that educating inmates concerning sexual abuse is of the utmost importance. Several agency commenters expressed concern that the Commission's recommended standard would impose a vague mandate by requiring the provision of comprehensive education to inmates within a "reasonably brief period of time" following intake. Agency commenters also requested clarification that such education could be provided via video. The proposed standard requires the provision of comprehensive education within 30 days of intake, and provides that such education may be provided via video. Although inmates who are incarcerated for less than 30 days might not receive such comprehensive education, all inmates will have received information upon intake. In addition, the Department has added a requirement that agencies must ensure that key information is continually and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

Due to the transitory nature of community confinement, the proposed standard does not mandate the provision of refresher information except upon transfer to another facility.

Sections 115.34, 115.134, 115.234, and 115.334 (compare to the Commission's TR–4 standard) requires that agencies that conduct their own sexual abuse investigations provide specialized training for their investigators in conducting such investigations in confinement settings, and that any State entity or Department of Justice component that investigates sexual abuse in confinement settings do the same. Although several agency commenters questioned the need for and cost of training tailored to confinement settings, the Department believes that such training is valuable and can be provided in a cost-effective manner. Models of such training already exist, and the Department is interested in receiving feedback on how it can provide additional assistance in developing such training.

Sections 115.35, 115.235, and 115.335 (compare to the Commission's TR–5 standard), require specialized training for all medical staff employed by the agency or facility. The proposed standard exempts lockups, which usually do not employ or contract for medical staff. The Commission found, and the Department agrees, that investigative and medical staff members serve vital roles in the response to sexual abuse, and the nature of their responsibilities require additional training in order to be effective. The Department further proposes that any agency medical staff who conduct forensic evaluations receive appropriate training.

*Screening for Risk of Sexual Victimization and Abusiveness: Sections 115.41, 115.241, 115.42, 115.242, and 115.43* (compare to the Commission's SC standards). Like the Commission, the Department believes that the proper classification of inmates

is crucial to preventing sexual abuse. Sound correctional management requires that agencies obtain information from inmates and use such information to assign inmates to housing units or specific cells in which they are likely to be safe. These proposed standards are substantively similar to those recommended by the Commission. Like the Commission's recommended standards, these standards do not apply to lockups, due to the short-term nature of lockup detention. However, the Department solicits comments on whether rudimentary screening should be mandated for lockups.

Sections 115.41 and 115.241 (compare to the Commission's SC–1 standard) require that agencies conduct screenings of inmates upon intake and during an initial classification process, pursuant to an objective screening instrument. Although the intake screening need not be as rigorous, the initial classification process for each inmate must consider, at a minimum, the existence of a mental, physical, or developmental disability; age; physical build; criminal history, including prior sex offenses and previous incarceration; whether the inmate is gay, lesbian, bisexual, transgender, or intersex; previous sexual victimization; perceived vulnerability; any history of prior institutional violence or sexual abuse; and (as added by the Department) whether an inmate is detained solely on civil immigration charges. Several commenters proposed reducing or eliminating the distinctions between the Commission's proposed screening criteria for male and female inmates. The Department has developed a set of criteria that is applicable to male and female inmates alike, although agencies may determine that the criteria should be weighed differently depending upon the inmate's gender.

*Question 21: Recognizing that lockup detention is usually measured in hours, and that lockups often have limited placement options, should the final rule mandate rudimentary screening requirements for lockups, and if so, in what form?*

The proposed standard clarifies that the initial classification screening must be conducted within 30 days of an inmate's confinement. Several agency commenters expressed concern about the cost and burden of conducting detailed screening upon an inmate's entrance into a facility. By clarifying that the detailed initial classification need only be conducted within 30 days of confinement, the Department intends to allow agencies with rapid turnover to avoid conducting a full classification, while still ensuring that an inmate is screened appropriately upon intake. Agencies that house all inmates beyond 30 days must conduct an intake screening followed by a more detailed classification. Although the proposed standard does not specify the scope of the intake screening, the intent of the standard is that institutions should do what is feasible at intake to ensure that inmate can be housed safely for a short period of time pending either release or a more detailed classification.

*Question 22: Should the final rule provide greater guidance regarding the required scope of the intake screening, and if so, how?*

The Department's proposed standard differs from the Commission's recommended standard in several additional respects. First, the proposed standard clarifies the Commission's reference to "subsequent classification reviews" by mandating that inmates should be rescreened when warranted due to a referral, request, or incident of sexual victimization. Second, recognizing that information provided at screenings is often highly sensitive, personal, and may put an individual at risk in a correctional setting, the Department proposes that such information be subject to appropriate controls to avoid unnecessary dissemination. Third, due to the personal nature of the information, the proposed standard specifies that it must not be a disciplinary infraction to fail to provide information during this process. Fourth, although the Commission would require use of a written instrument in the classification process, the Department has not adopted this requirement in order to allow for electronic evaluations.

Sections 115.42 and 115.242 (compare to the Commission's SC–2 standard) require administrators of adult prisons and jails and community confinement facilities to use the information obtained in a classification interview in order to separate individuals who are at risk of abuse from those at high risk of being sexually abusive. The proposed regulation is substantially similar to the Commission's standard with, two exceptions.

First, the proposed standard does not include the Commission's recommended ban on assigning inmates to particular units solely on basis of sexual orientation or gender identity. One commenter discussed the success of the Los Angeles County Jail in housing gay male and transgender prisoners in a separate housing unit. At a subsequent meeting with officials of that jail, the Department learned that the jail officials believe that the occupants of that separate unit are significantly safer than they would be in the general jail population. While the Department is not proposing a ban on such units, it urges that any agency that might be considering the creation of such a unit make every effort to ensure that its occupants receive the same access to programming and employment as inmates in the general population.

Second, the proposed standard mandates that transgender and intersex inmates, who may be especially vulnerable, receive an individualized assessment on whether the inmate should be housed in a male or female facility, to be reassessed at least twice each year to review any threats to safety experienced by the inmate.

Section 115.43 governs the use of protective custody, incorporating and expanding upon the relevant portion of the Commission's SC–2 standard. Due to the importance of protective custody, the Department believes it warrants its own standard, applicable only to adult prisons and jails, as other types of facilities usually do not have protective custody assignments of this nature. The proposed standard provides that inmates at high risk of sexual victimization may be placed in involuntary segregated housing only after an assessment of all available alternatives has been made—and only until an alternative housing arrangement can be implemented. The new standard also specifically defines the assessment process, specifies required documentation, and sets a presumptive time frame of 90 days. The Department recognizes that protective custody may be necessary in a correctional setting to ensure the safety of inmates and staff. However, the Department also notes that the prospect of placement in segregated housing may deter inmates from reporting sexual abuse. The new standard attempts to balance these concerns and ensure that alternatives to involuntary protective custody are considered and documented. In addition, the proposed standard contains the Commission's recommendation that, to the extent possible, protective custody should not limit access to programming.

*Assessment and Placement of Residents*: *Sections 115.341 and 115.342* (compare to the Commission's AP standards). Like the Commission, the Department refers to the categorization process in juvenile facilities as "assessment and placement" rather than "screening."

Sections 115.341 and 115.342 (compare to the Commission's AP–1 and AP–2 standards) govern screening requirements for juveniles. These two proposed standards take into account

the different practices and procedures that apply in juvenile facilities compared to adult prisons, jails, and community confinement facilities. Section 115.341 directs facilities to assess each resident's personal history and behavior upon intake and periodically throughout a resident's confinement to reduce the risk of sexual abuse. In addition to obtaining information in conversations with the resident, facilities can review court records, case files, facility behavioral records, and other relevant documentation from the resident's files. The proposed standard adds the inmate's own perception of vulnerability to the list of topics about which the facility should attempt to ascertain information.

As in the analogous adult standards, the Department has added a requirement that juveniles must be assessed and placed pursuant to an objective screening instrument, and that information obtained for this purpose be subject to appropriate controls to avoid unnecessary dissemination.

Several agency commenters expressed concern about the Commission's recommendation that only medical and mental health practitioners be allowed to talk with residents to gather information about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental or physical disabilities. The Department has not included this limitation in its proposed standard, agreeing with commenters that appropriately trained juvenile facility staff who are not medical or mental health practitioners can engage in productive conversations on these topics with residents.

Section 115.342 directs the facility to use the information gathered under § 115.341 to make housing, bed, program, education, and work assignments. As in the analogous adult standards, the proposed standard requires individualized assessments about whether a transgender resident should be housed with males or females. Unlike the adult standards, however, the proposed standard retains the Commission's recommended ban on housing separately residents who are lesbian, gay, bisexual, transgender, or intersex. Given the small size of the typical juvenile facility, it is unlikely that a facility would house a large enough population of such residents so as to enable a fully functioning separate unit, as in the Los Angeles County Jail. Accordingly, the Department believes that the benefit of housing such residents separately is likely outweighed by the potential for such segregation to be perceived as punishment or as akin to isolation.

Section 115.342 also addresses isolation for juveniles, allowing it only as a last resort when less restrictive means are inadequate to ensure resident safety, and then only until an alternative method of ensuring safety can be established.

*Reporting*: *Sections 115.51, 115.151, 115.251, 115.351, 115.52, 115.252, 115.352, 115.53, 115.253, 115.353, 115.54, 115.154, 115.254, and 115.354* (compare to the Commission's RE standards). Like the Commission, the Department believes that reporting instances of sexual abuse is critical to deterring future acts. The Department, however, has made significant changes to some of the Commission's proposed standards in this area.

Sections 115.51, 115.151, 115.251, and 115.351 (compare to the Commission's RE–1 standard) require agencies to enable inmates to privately report sexual abuse and sexual harassment and related misconduct. The Commission proposed that agencies be required to allow inmates to report abuse to an outside public entity, which would then forward reports to the facility head "except when an inmate requests confidentiality." Several commenters expressed concern that a public entity would be required to ignore reports of criminal activity if an inmate requested confidentiality. The proposed standard eliminates this exception; however, the Department solicits comments on the issue.

The Department notes that the Department of Defense provides a "restricted reporting" option that allows servicemembers to confidentially disclose the details of a sexual assault to specified Department employees or contractors and receive medical treatment and counseling, without triggering the official investigative process and, subject to certain exceptions, without requiring the notification of command officials or law enforcement. *See* Department of Defense Directive 6495.01, Enclosure Three; Department of Defense Instruction 6495.02. Under Department of Defense policy, such restricted reports may be made to a Sexual Assault Response Coordinator, a designated victim advocate, or healthcare personnel.

*Question 23: Should the final rule mandate that agencies provide inmates with the option of making a similarly restricted report to an outside public entity? To what extent, if any, would such an option conflict with applicable State or local law?*

The proposed standard also provides that, instead of enabling reports to an outside public entity, the agency may meet this standard by enabling reports to an office within the agency but that is operationally independent from agency leadership, such as an inspector general or ombudsperson. The proposed standard requires only that agencies make their best efforts to set up such systems, recognizing that it may not be possible for all agencies. However, an agency must endeavor diligently to establish such a system, and if it does not succeed, it must demonstrate that no suitable outside entity or internal office exists, and that it would be impractical to create an internal office to serve this role.

In addition, the proposed standard mandates that agencies establish a method for staff to privately report sexual abuse and sexual harassment of inmates. Finally, the proposed standard requires that juvenile residents be provided access to tools necessary to make written reports, whether writing implements or computerized reporting.

Sections 115.52, 115.252, and 115.352 (compare to the Commission's RE–2 standard) govern grievance procedures and the methods by which inmates exhaust their administrative remedies. The Commission's recommended standard would impose three requirements. First, the standard would mandate that an inmate be deemed to have exhausted administrative remedies regarding a claim of sexual abuse either when the agency makes a final decision on the merits of the report, regardless of the source, or 90 days after the report, whichever comes first. Second, the standard would mandate that the agency accept any grievance alleging sexual abuse regardless of the length of time that had passed between abuse and report. Third, the standard would provide that an inmate seeking immediate protection from imminent sexual abuse would be deemed to have exhausted administrative remedies 48 hours after notifying any agency staff member of the need for protection.

The Commission justified its standard as a means of ensuring that inmates have an effective method to seek judicial redress. The Commission noted that inmates who suffer sexual abuse are often too traumatized to comply with short time limitations imposed by many grievance systems. *See* Prison/Jail Standards at 35. In addition, the Commission noted, filing a grievance is not the typical way to report sexual abuse, and inmates who are told that they may report via other methods may not realize that they also need to file a

grievance in order to later pursue legal remedies. *See id.*

Numerous agency commenters registered several types of objections to the Commission's proposal. First, some commenters suggested that aspects of the Commission's proposals would violate the Prison Litigation Reform Act (PLRA), which provides in pertinent part that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. 1997e(a). Commenters noted that the Commission's proposal would not mandate the exhaustion of available administrative remedies such as a grievance system but rather would deem exhaustion to have occurred 90 days after sexual abuse is reported to the agency. Second, some commenters objected to the requirement that no limitations period be imposed on grieving sexual abuse, and suggested that this would allow filing of stale claims that would be difficult to investigate due to the passage of time. Third, some commenters suggested that imposing any standard in this area would encourage the filing of frivolous claims. Fourth, commenters objected to the imminent-abuse requirement on the grounds that it would not allow sufficient time for investigations, would allow inmates to define imminence, and would permit gamesmanship by inmates seeking changes to housing or facility assignments for reasons unrelated to sexual abuse.

Numerous commenters from advocacy groups and legal organizations endorsed the Commission's proposal as a way to ensure that inmates are able to vindicate their rights. Some commenters suggested that the standard should also address the PLRA's requirement that no prisoner may recover for mental or emotional injury without a prior showing of physical injury, *see* 42 U.S.C. 1997e(e), either by deeming this requirement inapplicable to victims of sexual abuse or by deeming sexual abuse to constitute physical injury *per se.*

The Department agrees with the Commission that a standard relating to grievance procedures would be beneficial in light of strong evidence that victims of sexual abuse are often constrained in their ability to pursue grievances, for reasons discussed by the Commission and by commenters. However, the Department believes that the Commission's recommended standard devotes insufficient attention to several policy concerns lodged by correctional agencies, regardless of whether those correctional agencies are correct that the Commission's proposal is inconsistent with the PLRA. Accordingly, the Department is proposing a standard that it believes is sensitive to legitimate agency concerns while providing inmates appropriate access to the legal process in order to obtain judicial redress where available under applicable law and to enable litigation to play a beneficial role in ensuring that agencies devote sufficient attention to combating sexual abuse.

The Department's proposed standard takes into account (1) the possibility that victims of sexual abuse may need additional time to initiate the grievance process; (2) the need for a final decision from the agency, and without undue delay; (3) the fact that such victims often report such abuse outside of the grievance system, and that the appropriate agency authorities may first learn of an allegation through a staff member or other third party; and (4) the need to provide swift redress in case of emergency. At the same time, the proposed standard recognizes (1) the need to comply with the PLRA; (2) the importance of providing agencies a meaningful amount of time to investigate allegations of sexual abuse; (3) the possibility that some inmates may fabricate claims of sexual abuse; and (4) the need to ensure accountability for grievances that are filed. The proposed standard does not address the PLRA's requirement that physical injury must be shown prior to any recovery for emotional or mental injury; the Department agrees with the Commission that the actions that commenters seek with regard to this requirement would require a statutory revision and cannot be accomplished via rulemaking.

Paragraph (a) of §§ 115.52, 115.252, and 115.352 governs the amount of time that inmates have after an alleged incident of sexual abuse to file a grievance. The proposed standard sets this time at 20 days, with an additional 90 days available if an inmate provides documentation, such as from a medical or mental health provider or counselor, that filing sooner would have been impractical due to trauma, removal from the facility, or other reasons. The 20-day limit matches the limitations period used by the Federal Bureau of Prisons (BOP) for all grievances, *see* 28 CFR 542.14(a), and according to a recent survey is shorter than the general limitations period for grievances in 18 States, *see* Appendix, Brief for the Jerome N. Frank Legal Services Organization of the Yale Law School As Amicus Curiae in Support of Respondent, *Woodford* v. *Ngo* (No. 05–416) (2006). By requiring actual documentation to obtain a 90-day extension for good cause shown, the proposed standard would reduce risk of inmate gamesmanship. The extension could be granted retroactively, thus avoiding the perverse consequence of recognizing that a victim may be too traumatized to file a grievance, while at the same time requiring the victim to file an extension request that documents such trauma.

Paragraph (b) of §§ 115.52, 115.252, and 115.352 governs the amount of time that agencies have to resolve a grievance alleging sexual abuse before it is deemed to be exhausted. The goal of this paragraph is to ensure that the agency is allotted a reasonable amount of time to investigate the allegation, after which the inmate may seek judicial redress. Paragraph (b) requires that agencies take no more than 90 days to resolve grievances alleging sexual abuse, unless additional time is needed, in which case the agency may extend up to 70 additional days. Time consumed by inmates in making appeals does not count against these time limits, in order to clarify that the agency's burden of producing timely responses applies only when a response is actually pending, and to ensure that agencies that allow generous time frames for inmates to take appeals are not penalized by receiving a commensurately shorter length of time to respond to inmate filings.

The 90-day limit and the 70-day extension period are consistent with current BOP procedures. BOP has a three-level grievance system: the Warden has 20 days to adjudicate the initial appeal, the Regional Director has 30 days to adjudicate an intermediate appeal, and the BOP General Counsel has 40 days to adjudicate a final appeal. *See* 28 CFR 542.18. BOP allows extensions at each level of 20, 30, and 20 days, respectively, if the normal time period is insufficient to make an appropriate decision. *See id.* The Department has not identified a broad survey that would allow comparison to State or local systems, but believes that the 90-day limit, extendable to 160 days, provides sufficient time for any agency to take appropriate steps to respond to allegations of sexual abuse prior to the initiation of a lawsuit.

Paragraph (c) of §§ 115.52, 115.252, and 115.352 requires that agencies treat third-party notifications of alleged sexual abuse as a grievance or request for informal resolution submitted on behalf of the alleged inmate victim for purposes of initiating the agency administrative remedy process. As the

Commission and some commenters have noted, it is inconsistent for an agency to assure inmates that it will investigate sexual abuse allegations made to any staff member and then defend against a lawsuit on the ground that the inmate failed to file a formal grievance with the proper facility official. As the Commission noted, "because grievance procedures are generally not designed as the sole or primary method for reporting incidents of sexual abuse by inmates to staff, victims who do immediately report abuse to authorities may not realize they need to file a grievance as well to satisfy agency exhaustion requirements." Prison/Jail Standards at 35. However, the Commission's recommendation that a third-party report suffice to bypass the grievance system altogether would deny correctional agencies the ability to investigate allegations of sexual abuse prior to the filing of a lawsuit. In addition, the Commission's proposal, if adopted, could require courts to adjudicate disputes over whether and when the agency in fact received such a report that would excuse the inmate from needing to file a grievance.

The proposed standard would address these concerns by requiring reports of sexual abuse to be channeled into the normal grievance system (including requests for informal resolution where required) unless the alleged victim requests otherwise. Reports from other inmates would be exempted from this requirement in order to reduce the likelihood that inmates would attempt to manipulate staff or other inmates by making false allegations. The proposed standard would permit agencies to require alleged victims to perform properly all subsequent steps in the grievance process, because at that point the rationale for third-party involvement would no longer exist. However, where the alleged victim of sexual abuse is a juvenile, the proposed standard would allow a parent or guardian to continue to file appeals on the juvenile's behalf unless the juvenile does not consent.

Paragraph (d) governs procedures for dealing with emergency claims alleging imminent sexual abuse. Many State prison systems expressly provide emergency grievance procedures where imminent harm is threatened. Such procedures usually require a speedy final agency decision, and therefore a speedy exhaustion of administrative remedies. These procedures address the possibility that some inmates may have reason to fear imminent harm from another inmate or from a staff member, in which case a lengthy grievance process would be unlikely to provide adequate relief.

However, the Department believes that the Commission's imminent-harm proposal is unworkable, because it would allow any inmate nearly instant court access based upon the inmate's mere assertion that sexual abuse is imminent. Under the Commission's proposal, an inmate could trigger these emergency exhaustion provisions by notifying any agency staff member, regardless of the staff member's authority to provide a remedy. Then, the inmate could automatically file suit within 48 hours, regardless of whether the claim of imminent harm has any merit. Such a regime could encourage the filing of frivolous claims in which sexual abuse is alleged as a vehicle to seek immediate judicial access in order to obtain an unrelated remedy, such as a change in housing assignment for reasons other than safety.

The proposed standard would require agencies to establish emergency grievance procedures resulting in a prompt response—unless the agency determines that no emergency exists, in which case the grievance may be processed normally or returned to the inmate, as long as the agency provides a written explanation of why the grievance does not qualify as an emergency. To deter abuse, an agency could discipline an inmate for deliberately alleging false emergencies. The Department believes that this provision, modeled on procedures in place in numerous States, would serve as an adequate deterrent to the filing of frivolous or strategic claims while advancing true emergencies to the head of the queue.

*Question 24: Because the Department's proposed standard addressing administrative remedies differs significantly from the Commission's draft, the Department specifically encourages comments on all aspects of this proposed standard.*

Sections 115.53, 115.253, and 115.353 (compare to the Commission's RE–3 standard) require that agencies provide inmates access to outside victim advocacy organizations, similar to the Commission's recommended standard. Several commenters expressed concern that the Commission's proposal would allow inmates unfettered and unmonitored access to outside organizations, possibly enabling inmate abuse of such access. The proposed standard modifies the Commission's recommended language, which would require communications to be "private, confidential, and privileged, to the extent allowable by Federal, State, and local law." Instead, the proposed rule requires that such communications be as confidential as possible consistent with agency security needs. The Department recognizes that allowing inmate access to outside victim advocacy organizations can greatly benefit inmates who have experienced sexual abuse yet who may be reluctant to report it to facility administrators, and notes that some agencies, such as the California Department of Corrections and Rehabilitation, have established successful pilot programs working with outside organizations. At the same time, the Department recognizes that communications with outsiders raise legitimate security concerns. The proposed standard strikes a balance by allowing confidentiality to the extent consistent with security needs.

The proposed standard also retains the Commission's recommendation that juvenile facilities be specifically instructed to provide residents with access to their attorney or other legal representation and to their families, in recognition of the fact that juveniles may be especially vulnerable and unaware of their rights in confinement. The proposed standard modifies the Commission's language by mandating that juvenile facilities provide access that is reasonable (and, with respect to attorneys and other legal representation, confidential) rather than unimpeded.

Sections 115.54, 115.154, 115.254, and 115.354 (compare to the Commission's RE–4 standard) requires that facilities establish a method to receive third-party reports of sexual abuse and publicly distribute information on how to report such abuse on behalf of an inmate. Elements of the Commission's RE–4 standard related to investigations are included in §§ 115.71, 115.171, 115.271, and 115.371.

*Official Response Following an Inmate Report: Sections 115.61, 115.161, 115.261, 115.361, 115.62, 115.162, 115.262, 115.362, 115.63, 115.163, 115.263, 115.363, 115.64, 115.164, 115.264, 115.364, 115.65, 115.165, 115.265, 115.365, 115.66, and 115.366* (compare to the Commission's OR standards). The Department proposes six standards addressing a facility's official response following a report of sexual abuse or sexual harassment. These six proposed standards are substantively similar to the five standards proposed by the Commission. This group of standards is intended to ensure coordinated, thorough, and complete agency reactions to reports of sexual abuse.

Sections 115.61, 115.161, 115.261, and 115.361 (compare to the Commission's OR–1 standard) set forth staff and agency reporting duties regarding incidents of sexual abuse.

Staff must be trained and informed about how to properly report incidents of sexual abuse while maintaining the privacy of the victim. Staff are required to immediately report (1) any knowledge, suspicion, or information regarding incidents of sexual abuse that take place in an institutional setting, (2) any retaliation against inmates or staff who report abuse, and (3) any staff neglect or violation of responsibilities that may have contributed to the abuse. The Department's proposed standard adds to the Commission's recommendations a requirement that the facility must report all allegations of sexual abuse to the facility's designated investigators, including third-party and anonymous reports.

Sections 115.62, 115.162, 115.262, and 115.362 (compare to the Commission's OR–2 standard) require that after a facility receives an allegation that one of its inmates was sexually abused at another facility, it must inform that other facility within 14 days. This standard recognizes that some victims of sexual abuse may not report an incident until they are housed in another facility. Such incidents must not evade investigation merely because the victim is no longer at the facility where the abuse occurred. The proposed standard tracks the Commission's recommendation but adds the 14-day time limit in order to provide further guidance to agencies. The standard also requires that the facility receiving the information must investigate the allegation.

Sections 115.63, 115.163, 115.263, and 115.363 (compare to the Commission's OR–3 standard) set forth staff first responder responsibilities. Staff need to be able to adequately counsel victims while maintaining security and control over the crime scene so any physical evidence is preserved until an investigator arrives. The proposed standard revises the Commission's recommendation by requesting, rather than instructing, victims not to take actions that could destroy physical evidence. This change is consistent with forthcoming revisions to the Office on Violence Against Women's *National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents.*

Sections 115.64, 115.164, 115.264, and 115.364 (compare to the Commission's OR–4 standard) require a coordinated response among first responders, medical and mental health practitioners, investigators, and facility leadership when an incident of sexual abuse takes place. This proposed standard is modeled after coordinated sexual assault response teams (SARTs), which are widely accepted as a best practice for responding to rape and other incidents of sexual abuse. Agencies are encouraged to work with existing community SARTs or create their own plan for a coordinated response. To ensure that the victim receives the best care possible and that the investigator has the best chance of apprehending the perpetrator, the Department recommends coordination of the following actions: (1) Assessing the victim's acute medical needs, (2) informing the victim of his or her rights under relevant Federal or State law, (3) explaining the need for a forensic medical exam and offering the victim the option of undergoing one, (4) offering the presence of a victim advocate or a qualified staff member to be present during the exam, (5) providing crisis intervention counseling, (6) interviewing the victim and any witnesses, (7) collecting evidence, and (8) providing for any special needs the victim may have.

Some commenters expressed uncertainty regarding how compliance with this standard would be measured.

*Question 25: Does this standard provide sufficient guidance as to how compliance would be measured? If not, how should it be revised?*

Sections 115.65, 115.165, 115.265, and 115.365 (compare to the Commission's OR–5 standard) require that the agency protect all inmates and staff from retaliation for reporting sexual abuse or for cooperating with sexual abuse investigations. Retaliation for reporting instances of sexual abuse and for cooperating with sexual abuse investigations is a real and serious threat in correctional facilities. Fear of retaliation, such as being subjected to harsh or hostile conditions, being attacked by other inmates, or suffering harassment from staff, prevents many inmates and staff from reporting sexual abuse, which in turn makes it difficult to keep facilities safe and secure. The proposed standard requires agencies to adopt policies that help ensure that those who do report are properly monitored and protected afterwards, including but not limited to providing information in training sessions, enforcing strict reporting policies, imposing strong disciplinary sanctions for retaliation, making housing changes or transfers for inmate victims or abusers, removing alleged staff or inmate abusers from contact with victims, and providing emotional support services for inmates or staff who fear retaliation.

A few agency commenters raised concerns regarding the burdens imposed by the proposed requirement that agencies monitor for 90 days the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations. The Department believes that 90 days is an appropriate minimum amount of time to ensure that no retaliation occurs, and that such monitoring can be performed without unduly consuming agency resources. The Department has added a requirement that monitoring continue beyond 90 days where the initial monitoring conducted during the initial 90-day period indicates concerns that warrant further monitoring.

*Question 26: Should the standard be further refined to provide additional guidance regarding when continuing monitoring is warranted, or is the current language sufficient?*

The Department's proposed standard adds a requirement that the Commission discussed but did not mandate: That an agency must not enter into or renew any collective bargaining agreement or other agreement that limits its ability to remove alleged staff abusers from contact with victims pending an investigation. This requirement builds on the Commission's suggestion, in the discussion section accompanying its OR–5 standard, that "agencies should try to secure collective bargaining agreements that do not limit their ability to protect inmates or staff from retaliation." Prison/Jail Standards at 42.

Sections 115.66 and 115.366 are new standards proposed by the Department, and clarify that the use of protective custody following an allegation of sexual abuse should be subject to the same requirements as the use of protective custody as a preventative measure.

*Investigations: Sections 115.71, 115.171, 115.271, 115.371, 115.72, 115.172. 115.272, 115.372, 115.73, 115.273, and 115.373* (compare to the Commission's IN standards). Like the Commission, the Department believes it is important to set standards to govern investigations of allegations of sexual abuse. The proposed standards in these sections are substantially similar to the Commission's recommendations, with some modifications.

Sections 115.71, 115.171, 115.271, and 115.371 (compare to the Commission's IN–1 and IN–2 standards) address criminal and administrative investigations. Although criminal and administrative investigations are quite different in nature, certain elements, like evidence, are critical to both. This proposed standard addresses how to preserve the elements that are important to both. The standard requires that agencies that conduct their own investigations must do so promptly,

thoroughly, and objectively. The proposed standard requires investigations whenever an allegation of sexual abuse is made, including third-party and anonymous reports, and mandates that an investigation may not be terminated on the ground that the alleged abuser or victim is no longer employed or housed by the facility or agency.

The proposed standard requires that investigators gather and preserve all available direct and circumstantial evidence. Because sexual abuse often has no witnesses and often leaves no visible injuries, investigators must be diligent in tracking down all possible evidence, including collecting DNA and electronic monitoring data, conducting interviews, and reviewing prior complaints and reports of sexual abuse involving the alleged perpetrator. Because of the delicate nature of these investigations, investigators should be trained in conducting sexual abuse investigations in compliance with §§ 115.34, 115.134, 115.234, and 115.334.

The proposed standard also requires that administrative investigators work with criminal prosecutors in gathering certain kinds of evidence, such as compelled interviews. It is critical that such interviews not undermine subsequent criminal prosecutions. The proposed standard does not, however, require that an administrative investigation be delayed until a decision whether to prosecute has been made. To ensure an unbiased evaluation of witness credibility, the proposed standard requires that credibility assessments be made objectively rather than on the basis of the individual's status as an inmate or a staff member.

In addition, the proposed standard requires that all investigations, whether administrative or criminal, be documented in written reports. Such reports must be retained for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

Some commenters expressed concern that the Commission's proposed standard would require agencies to dictate investigative procedures to outside entities responsible for conducting investigations within agency facilities. The Department's proposed standard simply requires that a facility cooperate with any outside investigators and endeavor to remain informed about the progress of the investigation. However, the proposed standard expressly applies to any outside investigator that is a State entity or Department of Justice component.

Sections 115.72, 115.172, 115.272, and 115.372 (compare to the Commission's IN–3 standard) set forth the evidentiary standard for administrative investigations. The Commission's proposed standard defined a "substantiated" sexual abuse allegation as one supported by a preponderance of the evidence. The Department's proposed standard allows the agency to define "substantiated" as being supported by a preponderance of the evidence or a lower evidentiary standard.

Sections 115.73, 115.273, and 115.373 address the agency's duty to report to inmates, a topic that the Commission included as part of its IN–1 standard. Specifically, upon completion of an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency must inform the inmate whether the allegation was deemed substantiated, unsubstantiated, or unfounded. If the agency itself did not conduct the investigation, it must request the relevant information from the investigating entity in order to inform the inmate. In addition, if an inmate has alleged that a staff member committed sexual abuse, the agency must inform the inmate whenever (1) the staff member is no longer posted in the inmate's unit, (2) the staff member is no longer employed at the facility, (3) the staff member has been indicted on a charge related to the reported conduct, or (4) the indictment results in a conviction. The Department's proposed standard does not apply to allegations that have been determined to be unfounded, and (as with the Commission's recommendation) does not apply to lockups, due to the short-term nature of lockup detention.

The Commission's recommended standard would require a facility to "notif[y] victims and/or other complainants in writing of investigation outcomes and any disciplinary or criminal sanctions, regardless of the source of the allegation." Several agency commenters expressed concern with the Commission's proposal on security or privacy grounds. These commenters questioned the wisdom of providing written information to victims and third-party complainants, where such information could easily become widely known throughout the facility and possibly endanger other inmates or staff. In addition, commenters noted that privacy laws may restrict the dissemination of certain information about staff members. The Department believes that its proposed standard strikes the proper balance between staff members' privacy rights and the inmate's right to know the outcome of the investigation, while protecting the security of both inmates and staff.

*Discipline: Sections 115.76, 115.176, 115.276, 115.376, 115.77, 115.177, 115.277, and 115.377* (compare to the Commission's DI standards). Like the Commission, the Department proposes two standards to ensure appropriate and proper discipline in relation to cases of sexual abuse. These standards are substantively similar to those offered by the Commission.

Sections 115.76, 115.176, 115.276, and 115.376 (compare to the Commission's DI–1 standard) govern disciplinary sanctions for staff members who violate sexual abuse or sexual harassment policies, regardless of whether they have been found criminally culpable. Imposing appropriate disciplinary sanctions against such staff members is critical not only to providing a just resolution to substantiated allegations of sexual abuse and sexual harassment but also to fostering a culture of zero tolerance for such acts. The sanction for sexually abusive conduct or penetration is presumed to be termination. Terminations for violating such policies, or resignations by staff who otherwise would have been terminated, must be reported to law enforcement agencies as well as to any relevant licensing bodies. However, the Department's proposed standard limits the Commission's recommendation by not requiring a report to law enforcement where the conduct was clearly not criminal. The proposed standard also adds the requirement—discussed but not mandated by the Commission, *see* Prison/Jail Standards at 47—that sanctions must be fair and proportional, taking into consideration the accused staff member's actions, disciplinary history, and sanctions imposed on other staff members in similar situations. Yet at the same time, such sanctions must send a clear message that sexual abuse is not tolerated.

Sections 115.77, 115.277, and 115.377 (compare to the Commission's DI–2 standard) govern disciplinary sanctions for inmates who are found to have sexually abused another inmate. Holding inmates accountable for such abuse is an essential deterrent and a critical component of a zero-tolerance policy. As with sanctions against staff, sanctions against inmates must be fair and proportional, taking into consideration the inmate's actions, disciplinary history, and sanctions imposed on other inmates in similar situations, and must send a clear message that sexual abuse is not tolerated. The disciplinary process must also take into account any mitigating

factors, such as mental illness or mental disability, and must consider whether to incorporate therapy, counseling, or other interventions that might help reduce recidivism.

The Department's proposed standard makes four changes to the Commission's recommendation, each of which was suggested by commenters. First, the proposed standard does not require therapy, but rather requires that the facility consider whether to condition access to programming or other benefits on the inmate agreeing to participate in therapy. Second, the standard does not permit disciplining inmates for sexual contact with staff without a finding that the staff member did not consent to such contact. Although agencies must not tolerate sexual contact between inmates and staff, the power imbalance between staff and inmates requires that discipline fall on the staff member unless he or she did not consent to the activity. Otherwise, inmates may be reluctant to report sexual abuse by staff for fear that they will be disciplined. Third, the standard provides that inmates may not be punished for making good-faith allegations of sexual abuse, even if the allegation is not substantiated following an investigation. Fourth, the standard provides that an agency must not consider consensual sexual contact between inmates to constitute sexual abuse. This standard is not intended to limit an agency's ability to prohibit such activity, but only to clarify that consensual sexual activity between inmates does not fall within the ambit of PREA.

Lockups generally do not hold inmates for prolonged periods of time and thus do not impose discipline. As a result, § 115.177, like the Commission's DI–2 standard for lockups, requires a referral to the appropriate prosecuting authority when probable cause exists to believe that one lockup detainee sexually abused another. If the lockup is not responsible for investigating allegations of sexual abuse, it must inform the responsible investigating entity. The proposed standard also applies to any State entity or Department of Justice component that is responsible for sexual abuse investigations in lockups.

*Medical and Mental Health Care: Sections 115.81, 115.381, 115.82, 115.182, 115.282, 115.382, 115.83, 115.283, and 115.383* (compare to the Commission's MM standards). Like the Commission, the Department has proposed three standards to ensure that inmates receive the appropriate medical and mental health care. Each proposed standard is substantially similar to that proposed by the Commission.

Sections 115.81 and 115.381 (compare to the Commission's MM–1 standard) requires that inmates be asked about any prior history of sexual victimization and abusiveness during their intake or classification screening. Although the proposed standards do not require inmates to answer these questions, inmates should be informed that disclosing prior sexual victimization and abuse is in their own best interest as such information is used both to determine whether follow-up care is needed and where the inmate can be safely placed within the facility.

Some commenters suggested that the Commission's recommended standard would be too costly because it would require that medical or mental health practitioners conduct these interviews. Unlike the Commission's standard, the proposed standard does not specify who should conduct this inquiry, but instead requires the inmate be offered a follow-up with a medical or mental health practitioner within 14 days of the intake screening. Some commenters also suggested that the standard proposed by the Commission would impose a disproportional cost burden on smaller jails whose current staffs would not be able to meet its requirements. The proposed standard limits the inquiry required in jails by not requiring an inquiry about prior sexual abusiveness.

Neither the Commission's recommended standard nor the Department's proposed standard applies to either lockups or community confinement facilities. The proposed standard is not appropriate for lockups given the relatively short time that they are responsible for inmate care. Nor is it appropriate for community confinement facilities, which do not undertake a similar intake/classification screening process.

Sections 115.82, 115.182, 115.282, and 115.382 (compare to the Commission's MM–2 standard) require that victims of sexual abuse receive free access to emergency medical treatment and crisis intervention services if they have been a victim of sexual abuse.

Sections 115.83, 115.283, and 115.383 (compare to the Commission's MM–3 standard) require that victims of sexual abuse receive access to ongoing medical and mental health care, and that abusers receive access to care as well. This proposed standard recognizes that victims of sexual abuse can experience a range of physical injuries and emotional reactions, even long after the abuse has occurred, that can require medical or mental health attention. Thus, this standard requires facilities to offer ongoing medical and mental health care consistent with the community level of care for as long as such care is needed. The standard also requires that known inmate abusers receive a mental health evaluation within 60 days of learning the abuse has occurred. If specific mental health concerns have contributed to the abuse, treatment may improve facility security.

Some commenters raised concerns about the cost of offering treatment to abusers, as opposed to treating only victims. The Department believes that the benefit of reducing future abuse by proven abusers justifies the additional cost, both in terms of future incidents avoided and an improved overall sense of safety within the facility. However, the proposed standard is not intended to require a specialized comprehensive sex offender treatment program, which as several commenters noted could impose a significant financial burden, and the Department believes that requiring agencies to offer reasonable treatment is justifiable in light of the anticipated costs and benefits.

*Question 27: Does the standard that requires known inmate abusers to receive a mental health evaluation within 60 days of learning the abuse has occurred provide adequate guidance regarding the scope of treatment that subsequently must be offered to such abusers? If not, how should it be revised?*

In addition, with respect to victims, this category of standards includes two recommendations from the discussion section that accompanied the Commission's MM–3 standard: where relevant, agencies must provide timely information of and access to all pregnancy-related medical services that are lawful in the community, and must provide pregnancy tests. *See* Prison/Jail Standards at 52. The Department also proposes to require the provision of timely information about and access to sexually transmitted infections prophylaxis where appropriate.

*Data Collection and Review: Section 115.86, 115.186, 115.286, 115.386, 115.87, 115.187, 115.287, 115.387, 115.88, 115.188, 115.288, 115.388, 115.89, 115.189, 115.289, and 115.389* (compare to the Commission's DC standards). Like the Commission, the Department has proposed four standards addressing how facilities should collect and review data to identify those policies and practices that are contributing to or failing to prevent sexual abuse and sexual harassment. Each of the proposed standards in the DC category is substantially similar to that proposed by the Commission.

Sections 115.86, 115.186, 115.286, and 115.386 (compare to the Commission's DC–1 standard) set forth

the requirements for sexual abuse incident reviews, including when reviews should take place and who should take part. The sexual abuse review is separate from the sexual abuse investigation, and is intended to evaluate whether the facility's policies and procedures need to be changed in light of the incident or allegation. By contrast, the investigation is intended to determine whether the abuse actually happened. A review should occur after every investigation, unless the investigation deems the allegation unfounded, and should consider (1) whether changes in policy or practice are needed to better prevent, detect, or respond to sexual abuse incidents like the one that occurred, (2) whether race, ethnicity, sexual orientation, gang affiliation or group dynamics in the facility played a role in the incident or allegation, (3) whether physical barriers in the facility itself contributed to the incident or allegation, (4) whether staffing levels need to be changed in light of the incident or allegation, and (5) whether more video monitoring is needed.

The Commission's proposed standard did not include sexual orientation in its list of issues to be considered what the review team should consider. Some commenters expressed the view that determining whether abuse is motivated by sexual orientation is just as important to an incident review as determining whether it was motivated by race. The proposed standard directs the review team to consider whether sexual orientation motivated or caused the incident or allegation.

Some commenters raised concerns about the cost of conducting sexual abuse incident reviews. There are, however, facilities that already do these reviews, and the Department believes that the required steps need not be onerous. The purpose of this requirement is not to require a duplicative investigation but rather to require the facility to pause and consider what lessons, if any, it can learn from the investigation it has conducted.

Sections 115.87, 115.187, 115.287, and 115.387 (compare to the Commission's DC–2 standard) specify the incident-based data each agency is required to collect in order to detect possible patterns and help prevent future incidents. Under this standard, the agency is required to collect data needed to completely answer all questions included in BJS's Survey on Sexual Violence. The Department has added a requirement that an agency must provide the Department with this data upon request.

Sections 115.88, 115.188, 115.288, and 115.388 (compare to the Commission's DC–3 standard) describe how the collected data should be analyzed and reported. The proposed standard mandates that agencies use the data to identify problem areas, take ongoing corrective action, and prepare an annual report for each facility as well as the agency as a whole, including a comparison with data from previous years. The report must be made public through the agency's Web site or other means to help promote agency accountability. The Department cautions, however, that an increase in reported incidents may reflect improvements in a facility's policies regarding reporting and investigation, rather than an actual increase in sexual abuse at the facility.

Sections 115.89, 115.189, 115.289, and 115.389 (compare to the Commission's DC–4 standard) provide guidance on how to store, publish, and retain the data. Data must be stored in a way that protects its integrity and must be retained for an adequate length of time, *i.e.,* at least 10 years. In addition, data must protect the confidentiality of victims and alleged perpetrators. This standard also requires that the agency make its aggregated data publicly available either through its Web site or other means.

*Audits: Sections 115.93, 115.193, 115.293, and 115.393* (compare to the Commission's AU–1 standard). Like the Commission, the Department believes that independent audits are critical to ensuring that facilities are doing all they can to eliminate prison rape. The Commission's proposed standard would require triennial audits of all facilities by independent auditors "prequalified" by the Department. The Commission explained its inclusion of this standard as follows:

> Publicly available audits allow agencies, legislative bodies, and the public to learn whether facilities are complying with the PREA standards. Audits can also be a resource for the Attorney General in determining whether States are meeting their statutory responsibilities. Public audits help focus an agency's efforts and can serve as the basis upon which an agency can formulate a plan to correct any identified deficiencies.
>
> Prison/Jail Standards at 57.

Numerous agency commenters criticized the Commission's proposals on various grounds, including cost, duplication of audits performed by accrediting organizations, duplication of existing State oversight, and the possibility that disagreements in interpretation could lead to inconsistencies in auditing. Other commenters endorsed the Commission's proposal as necessary to ensure proper oversight; some commenters suggested that audits should be more frequent than once every three years.

The Department believes that independent audits can play a key role in implementation of PREA, especially given the fact that only States, but not localities or Federal entities, are subject to financial penalties for noncompliance. Audits, however, can be time-consuming and resource-intensive. Particularly as agencies come into compliance with the substantive standards, routine audits may not contribute to improving agency performance to a degree that warrants the time and resources committed to them. The Department believes that further discussion is necessary in order to determine how frequently, and on what basis, such audits should be conducted. Accordingly, the proposed standard does not specify the frequency of audits.

The Department has identified three possible approaches to the frequency of audits, and specifically invites comment on these as well as any other options commenters may wish to propose.

One possible approach is to adopt the Commission's proposal of triennial audits for all covered facilities, possibly with a modification lowering or eliminating the burden on lockups, the smallest facilities covered by PREA. A second approach is to adopt a system of random sampling of facilities. Because no facility would know in advance whether it would be audited, all facilities would have an incentive to be in compliance. A third approach is to implement an auditing system based on information indicating concerns at a particular facility. Audits could be triggered when information was received providing reason to believe that a particular facility is significantly out of compliance with the standards. Such a trigger could be based upon facility-provided data, third-party complaints, or any other source of credible information.

The proposed audit standard clarifies the requirements for an audit to be considered independent. If the agency uses an outside auditor, it must ensure that it does not have a financial relationship with the auditor for three years before or after the audit, other than payment for the audit conducted. The proposed standard specifies that the audit may be conducted by an external monitoring body that is part of, or authorized by, State or local government, such as a government agency or nonprofit entity whose purpose is to oversee or monitor correctional facilities. In addition, the

proposed standard allows an agency to utilize an internal inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board. The Department believes that allowing these entities to perform audits would ensure auditor independence while at the same time allowing the use of existing resources where available in order to reduce costs and duplication of effort.

The proposed standard further states that the Department will prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and inmates, as well as the minimal qualifications for auditors. Although the Commission's proposal would mandate that the agency provide access to facilities, documents, and personnel "as deemed appropriate by the auditor," the Department believes that it would be prudent to set general ground rules in order to ensure that auditors are provided sufficient access without agencies incurring excessive or unpredictable expenditures or commitment of personnel.

*Question 28: Should audits be conducted at set intervals, or should audits be conducted only for cause, based upon a reason to believe that a particular facility or agency is materially out of compliance with the standards? If the latter, how should such a for-cause determination be structured?*

*Question 29: If audits are conducted for cause, what entity should be authorized to determine that there is reason to believe an audit is appropriate, and then to call for an audit to be conducted? What would be the appropriate standard to trigger such an audit requirement?*

*Question 30: Should all facilities be audited or should random sampling be allowed for some or all categories of facilities in order to reduce burdens while ensuring that all facilities could be subject to an audit?*

*Question 31: Is there a better approach to audits other than the approaches discussed above?*

*Question 32: To what extent, if any, should agencies be able to combine a PREA audit with an audit performed by an accrediting body or with other types of audits?*

*Question 33: To what extent, if any, should the wording of any of the substantive standards be revised in order to facilitate a determination of whether a jurisdiction is in compliance with that standard?*

*State Certification and Definition of "Full Compliance.*" PREA mandates that any amount that a State would otherwise receive for prison purposes from the Department in a given fiscal year shall be reduced by five percent unless the chief executive of the State certifies either that the State is in "full compliance" with the standards or assures that not less than five percent of such amount shall be used "only for the purpose of enabling the State to adopt, and achieve full compliance with" the standards "so as to ensure that a certification * * * may be submitted in future years." 42 U.S.C. 15607(c)(2). This requirement goes into effect for the second fiscal year beginning after the date on which the national standards are finalized. *See* 42 U.S.C. 15607(c)(7)(A).

The Department solicits comments on the proper construction of the term "full compliance," keeping in mind Congress's view that States would be able to—and should be encouraged to—achieve full compliance. One possibility is to define "full compliance" as adoption of and compliance with each and every standard, but to provide that de minimis failures to comply with a standard will not throw a State out of compliance. In other words, a State would be required to adopt and implement every applicable standard, but would not be held to a requirement of perfection in order to be considered in full compliance. The Department is interested both in suggestions for how to define full compliance and how an assessment would be made as to whether a State is in full compliance. In crafting such a definition, the Department aims to ensure that full compliance is actually attainable for States and that States receive sufficient and timely guidance on how the term is to be interpreted.

*Question 34: How should "full compliance" be defined in keeping with the considerations set forth in the above discussion?*

*Question 35: To what extent, if any, should audits bear on determining whether a State is in full compliance with PREA?*

*Other Executive Departments.* With respect to Federal entities, the proposed rule would not apply beyond certain Department of Justice components. The Department has interpreted PREA to authorize and require the Attorney General to make the national standards binding only on the Bureau of Prisons, which houses criminal inmates. Non-PREA authorities authorize the Attorney General to make the standards binding on other Department facilities housing criminal inmates, such as U.S. Marshals Service facilities, and to make those standards that are relevant to the conduct of investigations binding on Department components that are responsible for investigation allegations of sexual abuse in confinement settings. *See, e.g.,* 28 U.S.C. 503, 509, 561–566; 18 U.S.C. 4001(b). Thus, while the proposed standards may be considered and adopted, as appropriate, by other Federal agencies housing detainees and inmates, the proposed rule makes the standards binding only on Department facilities.

*Supplemental Immigration Standards.* The Department does not propose including the set of supplemental standards that the Commission recommended to govern facilities that house immigration detainees. As the Commission noted in its final report, immigration detainees are sometimes detained in local or State facilities or in facilities operated by the Federal Bureau of Prisons. The Commission's ID–6 standard would mandate that immigration detainees be housed separately. Several commenters expressed concern that this would impose a significant burden on jails and prisons. The Department has similar concerns about the Commission's other proposed supplemental standards, such as imposing separate training requirements, requiring agencies to attempt to enter into separate memoranda of understanding with immigration-specific community service providers, and requiring the provision of access to telephones with free, preprogrammed numbers to specified Department of Homeland Security offices. The Department expects that its proposed general training requirements, along with the general requirements to make efforts to work with outside government entities and community service providers, will serve to protect immigration detainees along with the general inmate population. In addition, the Department has included in §§ 115.41 and 115.241 a requirement that screenings for risk of victimization include a consideration of whether the inmate is detained solely on civil immigration charges. Furthermore, the Department notes that ICE has published Performance Based National Detention Standards for the civil detention of aliens pending removal from the United States by ICE detention facilities, Contract Detention Facilities, and State or local government facilities used by ICE through Intergovernmental Service Agreements to hold detainees for more than 72 hours, and that one standard specifically addresses Sexual Abuse and Assault Prevention and Intervention. *See http://www.ice.gov/detention-standards/2008/* and *http://*

*www.ice.gov/doclib/dro/detention-standards/pdf/sexual_abuse_and_assault_prevention_and_intervention.pdf.*

*Additional Suggested Standard.* Several commenters suggested that the Department should propose an additional standard to govern the placement and treatment of juveniles in adult facilities. A number of advocacy groups proposed a full ban on placing persons under the age of 18 in adult facilities where contact would occur with incarcerated adults. Others proposed instead that the standards incorporate the requirements of the Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5601 *et seq.,* which provides formula grants to States on the condition that States comply with certain requirements intended to, among other things, protect juveniles from harm by, subject to certain exceptions, deinstitutionalizing status offenders, separating juveniles from adults in secure facilities, and removing juveniles from adult jails and lockups. *See* 42 U.S.C. 5633(a)(11)–(14). States that participate in the JJDPA Formula Grants Program are subject to a partial loss of funding if they are found not to be in compliance with specified requirements. The JJDPA's implementing regulations limit its application to youths who are tried in juvenile courts, but some commenters suggested that the Department should propose a standard that includes youth under adult criminal court jurisdiction.

The Department's proposed standards do not include a standard on this topic. However, the Department solicits comments on whether the final rule should include such a standard.

*Question 36: Should the final rule include a standard that governs the placement of juveniles in adult facilities?*

*Question 37: If so, what should the standard require, and how should it interact with the current JJDPA requirements and penalties mentioned above?*

## V. Regulatory Certifications

*Executive Order 12866—Regulatory Planning and Review*

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. Please *see* the Initial Regulatory Impact Analysis, summarized below, for a discussion of the costs and benefits of this rule.

*Executive Order 13132—Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. This rule merely proposes regulations to implement PREA by establishing national standards for the detection, prevention, reduction, and punishment of prison rape. Further, PREA prohibits the Department from establishing national standards that would impose substantial additional costs compared to the costs presently expended by Federal, State and local prison authorities. In drafting the standards, the Department was mindful of its obligation to meet the objectives of PREA while also minimizing conflicts between State law and Federal interests. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Notwithstanding the determination that the formal consultation process described in Executive Order 13132 is not required for this rule, the Department's PREA Working Group consulted with representatives of State and local prisons and jails, juvenile facilities, community corrections programs and lockups—among other individuals and groups—during the listening sessions the Working Group conducted in January and February 2010. The Department also solicited and received input from public entities in its ANPRM.

*Executive Order 12988—Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies, unless otherwise prohibited by law, to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

The Department has assessed the probable impact of the PREA regulations and, as is more fully described in the Initial Regulatory Impact Analysis, believes these regulations will likely result in an aggregate expenditure by State and local governments of approximately $213 million in startup expenses and $544 million in annual ongoing expenses.

However, the Department believes the requirements of the UMRA do not apply to the PREA regulations because UMRA excludes from its definition of "Federal intergovernmental mandate" those regulations imposing an enforceable duty on other levels of government which are "a condition of Federal assistance." 2 U.S.C. 658(5)(A)(i)(I). PREA provides that any amount that a State would otherwise receive for prison purposes from the Department in a given fiscal year shall be reduced by five percent unless the chief executive of the State certifies either that the State is in "full compliance" with the standards or that not less than five percent of such amount shall be used to enable the State to achieve full compliance with the standards. Accordingly, compliance with these PREA standards is a condition of Federal assistance.

Notwithstanding how limited the Department's obligations may be under the formal requirements of UMRA, the Department has engaged in a variety of contacts and consultations with State and local governments including during the listening sessions the Working Group conducted in January and February 2010. Further, the Department also solicited and received input from public entities in its ANPRM.

For the foregoing reasons, while the Department does not believe that a formal statement pursuant to the UMRA is required, it has, for the convenience of the public, summarized as follows various matters discussed at greater length elsewhere in this rulemaking which would have been included in a UMRA statement should that have been required:

- These national standards are being issued pursuant to the requirements of the Prison Rape Elimination Act of 2003, 42 U.S.C. 15601 *et seq.*
- A qualitative and quantitative assessment of the anticipated costs and benefits of these national standards appears below in the Regulatory Flexibility Act section;
- The Department does not believe that these national standards will have an effect on the national economy, such as an effect on productivity, economic growth, full employment, creation of productive jobs, or international competitiveness of United States goods and services;
- The Department consulted with State and local governments during the listening sessions the Working Group conducted in January and February

2010. Further, the Department also solicited and received input from public entities in its ANPRM. The Department received numerous comments on its ANPRM from State and local entities, the vast majority of which focused on the potential costs associated with certain of the Commission's recommended standards. Standards of particular cost concern included the cross-gender pat-down prohibition, the auditing standard, and standards regarding staff supervision and video monitoring. The Department has altered various standards in ways that it believes will appropriately mitigate the cost concerns identified in the comments. State and local entities also expressed concern that the standards were overly burdensome on small correctional systems and facilities, especially in rural areas. The Department's proposed standards include various revisions to the Commission's recommendations in an attempt to address this issue.

- Before it issues final regulations implementing national standards pursuant to PREA the Department will: (1) Provide notice of these requirements to potentially affected small governments, which it has done by publishing the ANPRM, by the publishing of this Notice of proposed rulemaking, by the listening sessions it has conducted, and by other activities; (2) enable officials of affected small governments to provide meaningful and timely input, via the methods listed above; and (3) work to inform, educate, and advise small governments on compliance with the requirements.
- As discussed above in the Initial Regulatory Impact Assessment summarized below, the Department has identified and considered a reasonable number of regulatory alternatives and from those alternatives has attempted to select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of PREA.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule may result in an annual effect on the economy of $100,000,000 or more, although it will not result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Regulatory Flexibility Act*

The Department of Justice drafted this proposed rule so as to minimize its impact on small entities, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, while meeting its intended objectives. Based on presently available information, the Department is unable to state with certainty that the proposed rule, if promulgated as a final rule, would not have any effect on small entities of the type described in 5 U.S.C. 601(3). Accordingly, the Department has prepared an Initial Regulatory Impact Analysis (IRIA) in accordance with 5 U.S.C. 604. A summary of the IRIA appears below; the complete IRIA is available for public review at *http://www.ojp.usdoj.gov/programs/pdfs/prea_nprm_iria.pdf.* Following the summary, the Department lists a set of questions upon which it specifically solicits public comment. However, the Department welcomes information and feedback concerning any and all of the assumptions, estimates, and conclusions presented in the IRIA.

In PREA, Congress directed the Attorney General to promulgate national standards for the detection, prevention, reduction, and punishment of prison rape. In doing so, Congress understood that such standards were likely to require Federal, State, and local agencies (as well as private entities) that operate inmate confinement facilities to incur costs in implementing the standards. Given the statute's aspiration to eliminate prison rape in the United States, Congress expected that some level of compliance costs would be appropriate and necessary.

Nevertheless, Congress imposed a limit on the cost of the standards. Specifically, Congress instructed the Attorney General not to adopt any standards "that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. 15607(a)(3). This statutory mandate requires that the Department evaluate costs and benefits before promulgating national standards.

Moreover, separate and apart from what PREA itself requires, the Department is required by both the RFA and Executive Order 12866, *Regulatory Planning and Review,* as amended without substantial change by Executive Order 13258, to conduct an IRIA to assess the benefits and costs of its proposed rule. An IRIA must include an assessment of both the quantitative and qualitative benefits and costs of the proposed regulation, as well as a discussion of potentially effective and reasonably feasible alternatives, in order to inform stakeholders in the regulatory process of the effects of the proposed rule.

Some stakeholders may question whether economic analysis is even relevant to the implementation of a civil rights statute. Under this view, because PREA aims to protect the Eighth Amendment rights of incarcerated persons, regulations designed to implement its protections are necessary regardless of whether benefits can be shown to outweigh costs. Furthermore, some might argue, many expected benefits—including protecting the constitutional and dignitary rights of inmates—may defy ready identification and quantification, making a monetized benefit-cost analysis an unfair comparison.

The Department is sympathetic to these views. The destructive, reprehensible, and illegal nature of rape and sexual abuse in any setting, and its especially pernicious effects in the correctional environment, warrant the adoption of strong and clear measures. However, as noted above, PREA mandates that the Attorney General remain conscious of costs in promulgating national standards. Moreover, the statutes that require agencies to express the benefits and costs of regulations in economic terms do not distinguish between regulations that implement civil rights statutes and regulations that implement other laws.

The Department also believes that presenting a comprehensive assessment of the benefits and costs of its proposed standards, described in both quantitative and qualitative terms, will promote greater understanding of PREA and may facilitate compliance with the standards.

A summary of the major conclusions of the IRIA is set forth below. However, the Department encourages review of the complete IRIA in order to assess the Department's assumptions, calculations, and conclusions.

The IRIA begins by estimating the prevalence of sexual abuse in prisons—*i.e.,* the number of persons who experience it each year. Next, the IRIA calculates the cost of specific types of victimization, and therefore the benefit that will accrue from reducing such incidents. The IRIA then calculates the anticipated costs of the Department's proposed standards. Finally, the IRIA calculates how much of a reduction in prison rape would be necessary in order for the benefits of the proposed standards to outweigh the costs.

*Prevalence.* Table 1 sets forth the estimate of the baseline prevalence of prison rape for benefit-cost analysis

purposes, divided into four different event types (rape involving force, nonconsensual sexual acts involving pressure, abusive sexual contacts, and willing sex with staff) in three different confinement settings (adult prisons, adult jails, and juvenile facilities). (The Department is not aware of reliable data as to the prevalence of rape and sexual abuse in lockup and community confinement settings.) For each event type, the total number of individuals who were victimized during 2008 is estimated, using figures compiled from inmate surveys by BJS,[6] as adjusted to account for the flow of inmates over that period of time. Inmates who experienced more than one type of victimization during the period are included in the figures for the most serious type of victimization they reported.

TABLE 1—BASELINE PREVALENCE OF PRISON RAPE AND SEXUAL ABUSE BY TYPE OF INCIDENT AND TYPE OF FACILITY, 2008

| | Adult prisons | Adult jails | Juvenile facilities |
|---|---|---|---|
| Rape involving force/threat of force | 26,200 | 39,200 | 4,400 |
| Nonconsensual sexual acts involving pressure/coercion | 18,400 | 14,800 | 2,900 |
| Abusive sexual contacts | 19,000 | 23,000 | 3,000 |
| Willing sex with staff | 27,800 | 31,100 | 6,800 |
| Total | 91,400 | 108,100 | 17,100 |

*Benefits.* Table 2 sets forth a range of costs associated with one incident of each type of victimization in each of the three settings. These costs are also known as "unit avoidance benefits"—that is, the benefits that will accrue from avoiding one incident that otherwise would occur. These values have been derived from general literature assessing the cost of rape,[7] with adjustments made to account for the unique characteristics of rape in the prison setting. The values are presented as a range. The lower bound is calculated using the "victim compensation model," which aims to identify the costs of sexual abuse to the victim, both tangible (such as medical and mental health care) and intangible (such as pain and suffering). The upper bound is calculated using the "contingent valuation model," which assesses how much the public would be willing to pay to avoid an incident of sexual abuse.

TABLE 2—RANGE OF UNIT AVOIDANCE BENEFITS BY TYPE OF VICTIM AND TYPE OF FACILITY, IN 2010 DOLLARS

| | Adult prisons | Adult jails | Juvenile facilities |
|---|---|---|---|
| Rape involving force/threat of force | $200,000 to $300,000 | | $275,000 to $400,000. |
| Sexual assault involving pressure/coercion | $40,000 to $60,000 | | $55,000 to $80,000. |
| Abusive sexual contacts | $375 | | $500. |
| Willing sex with staff | $375 | | $55,000 to $80,000. |

Table 3 sets forth the total monetary benefit of a 1% reduction from the baseline in the average annual prevalence of prison rape, which is calculated by multiplying the unit avoidance benefit by 1% of the total number of incidents for each category.

TABLE 3—TOTAL MONETARY BENEFIT OF A 1% REDUCTION FROM THE BASELINE IN THE AVERAGE ANNUAL PREVALENCE OF PRISON RAPE AND SEXUAL ABUSE IN THOUSANDS OF 2010 DOLLARS

| | Adult prisons | Adult jails | Juvenile facilities | Total |
|---|---|---|---|---|
| Rape involving injury/force/threat of force | $52,400 to $78,600 | $78,400 to $117,600 | $9,636 to $17,600 | $140,436 to $213,800. |
| Nonconsensual sexual acts involving pressure/coercion. | $7,360 to $11,040 | $5,920 to $8,880 | $1,276 to $2,320 | $14,556 to $22,240. |
| Abusive sexual contacts | $71 | $86 | $12 | $169. |
| Willing sex with staff | $104 | $117 | $1,496 to $2,720 | $1,555 to $2,779. |
| Total (Rounded) | $60,000–$90,000 | $84,500 to $126,500 | $12,500 to $22,500 | $157,000 to $239,000. |

As noted in the bottom right cell in Table 3, the total monetary benefit of a 1% reduction in the prevalence of prison rape and sexual abuse is between $157 and $239 million.

However, these calculations do not include the substantial nonmonetary benefits associated with reducing the prevalence of prison rape and sexual abuse. As Executive Order 12866 instructs, a proper understanding of costs and benefits must "include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of

[6] *See* BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09* (NCJ 231169) (Aug. 2010); BJS, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008–09* (NCJ 228416) (Jan. 2010).

[7] *See, e.g.,* National Institute of Justice Research Report, *Victim Costs and Consequences: A New Look* (NCJ 155282) (Jan. 1996), *available at http://www.ncjrs.gov/pdffiles/victcost.pdf;* Ted R. Miller *et al., Costs of Sexual Violence in Minnesota* (Minn. Dep't Health July 2007), *available at http://www.pire.org/documents/mn_brochure.pdf;* Mark A. Cohen *et al., Willingness-to-Pay for Crime Control Programs,* 42 Criminology 89 (2004).

costs and benefits that are difficult to quantify, but nevertheless essential to consider." Sec. 1(a), E.O. 12866.

Non-quantifiable benefits from reducing sexual abuse accrue to the victims themselves, to inmates who are not victims, to prison administrators and staff, to families of victims, and to society at large. For example, the PREA standards will yield non-quantifiable benefits to victims even with regard to abuse that the standards do not prevent. Implementation of the standards will enhance the mental well-being of victims by ensuring that they receive adequate treatment after an incident, which in turn will enhance their ability to integrate into the community and maintain stable employment upon their release from prison. Moreover, the standards will reduce the risk of re-traumatization associated with evidence collection, investigation, and any subsequent legal proceedings that take place in connection with sexual abuse and its prosecution. Victims will also benefit from the increased likelihood that their perpetrators will be held accountable for their crimes. A broader range of non-quantifiable benefits for inmates, staff, and others is discussed in the complete IRIA.[8]

*Costs.* The IRIA contains a preliminary assessment of the anticipated compliance costs associated with the Department's proposed standards. The primary source for this assessment is study conducted by Booz Allen Hamilton, a consulting firm with which the Department contracted to develop a preliminary cost analysis of the Commission's recommended standards. The IRIA adjusts this cost analysis to estimate the compliance costs of the Department's proposed standards, rather than the Commission's recommendations. Other sources include assessments by the Federal Bureau of Prisons (BOP) and the United States Marshals Service (USMS) of their expected implementation costs as well as comments submitted in response to the ANPRM.

The IRIA estimates the cost of implementing each of the proposed standards, assuming that the first full year for which the standards will be applicable is 2012, with all startup expenses assigned to that year. Subsequent compliance costs are assigned in present value terms (using both a 3% and a 7% discount rate), for 2013 through 2026. Where possible, costs are differentiated based on facility type: prisons, jails, juvenile facilities, community confinement facilities, and lockups. The IRIA assumes that the Department's standards will apply to, and will be adopted and implemented by: 1,668 prisons; 3,365 jails; 2,810 juvenile facilities; lockups operated by at least 4,469 different agencies; and approximately 530 community confinement facilities. *See* BJS, *2005 Census of State and Federal Correctional Facilities; 2006 Census of Jail Facilities;* and *2008 Juvenile Residential Facility Census* (unpublished; on file with BJS).

Table 4 sets forth in summary fashion the anticipated costs of compliance on a startup, ongoing, and total (15-year) basis. No adjustment is made in the out-years for inflation or for anticipated cost savings due to innovation—that is, costs are assumed to be constant in nominal terms over the course of the 15-year period.

TABLE 4—TOTAL EXPECTED COMPLIANCE COSTS, 2012–2026 BY FACILITY TYPE, IN THOUSANDS OF DOLLARS

| | Startup | Ongoing | Total 2012–2026 3% discount rate (present value) | Total 2012–2026 7% discount rate (present value) |
|---|---|---|---|---|
| Prisons | $26,304 | $56,407 | $411,494 | $249,035 |
| Jails | 117,742 | 356,618 | 2,745,729 | 1,762,524 |
| Juvenile Facilities | 24,087 | 78,497 | 602,546 | 386,128 |
| Community Confinement | 300 | 2,358 | 17,680 | 11,177 |
| Lockups | 44,913 | 50,583 | 417,672 | 278,212 |
| Total | 213,346 | 544,463 | 4,195,121 | 2,687,076 |

Thus, the Department currently projects that compliance costs for the proposed standards will be approximately $213 million in the first (startup) year, followed by an average cost of approximately $544 million per year subsequently. Table 5 compares the projected nationwide upfront and ongoing costs of the Commission's recommendations to the Department's proposed standards. The Commission's recommended standards would cost an estimated $6.5 billion in upfront costs plus $5.3 billion in annual costs. As noted in Table 5, the Department's proposed standards, depending upon the type of facility, would require an estimated 31% to 99% less in upfront costs than the Commission's recommended standards and 44% to 99% less in ongoing costs.

TABLE 5—COMPARISON OF PROJECTED NATIONWIDE UPFRONT AND ONGOING COSTS COMMISSION RECOMMENDATIONS VERSUS DEPARTMENT PROPOSED STANDARDS IN THOUSANDS OF DOLLARS

| | Upfront costs | | | Ongoing costs | | |
|---|---|---|---|---|---|---|
| | Commission | DOJ | Difference (percent) | Commission | DOJ | Difference (percent) |
| Prisons | $2,778,770 | $26,304 | 99.05 | $733,166 | $56,407 | 92.31 |
| Jails | 3,151,806 | 117,742 | 96.26 | 1,955,154 | 356,618 | 81.76 |
| Juvenile | 475,562 | 24,087 | 94.94 | 139,417 | 78,497 | 43.70 |
| Comm. Conf | 20,944 | 300 | 98.57 | 233,735 | 2,358 | 98.99 |
| Lockups | 65,093 | 44,913 | 31.00 | 2,240,096 | 50,583 | 97.74 |

[8] As noted above, the Department is not aware of reliable data regarding the prevalence of sexual abuse in lockups and community confinement facilities. The IRIA accordingly classifies these as non-quantifiable benefits. *See* IRIA at 14–15, 27.

TABLE 5—COMPARISON OF PROJECTED NATIONWIDE UPFRONT AND ONGOING COSTS COMMISSION RECOMMENDATIONS VERSUS DEPARTMENT PROPOSED STANDARDS IN THOUSANDS OF DOLLARS—Continued

| | Upfront costs | | | Ongoing costs | | |
|---|---|---|---|---|---|---|
| | Commission | DOJ | Difference (percent) | Commission | DOJ | Difference (percent) |
| Total | 6,492,175 | 213,346 | 96.71 | 5,301,568 | 544,463 | 89.73 |

Table 6 depicts the expected upfront and ongoing compliance costs associated with the Department's proposed standards on a per-facility and per-inmate basis for the different facility types.

TABLE 6—EXPECTED UPFRONT AND ONGOING COMPLIANCE COSTS, NATIONWIDE, PER FACILITY AND PER INMATE

| | Upfront | Ongoing |
|---|---|---|
| Prisons, per Facility | $15,770 | $33,817 |
| Prisons, Per Inmate | 16.48 | 35.35 |
| Jails, Per Facility | 34,990 | 105,978 |
| Jails, Per Inmate | 96.00 | 292.00 |
| Juvenile, per Facility | 8,572 | 27,935 |
| Juvenile, per Resident | 227.00 | 741.00 |
| Comm. Conf., per Person | 5.36 | 42.12 |
| Lockups, per Facility | 9,843 | 11,086 |

Next, to evaluate whether the costs of the proposed PREA standards are justified in light of their anticipated benefits, the IRIA conducts a break-even analysis to determine how much the standards would need to reduce prison rape in order for benefits to exceed costs, and to assess whether it is reasonable to assume that the standards will in fact be as effective as needed for this to occur.

As elaborated in Tables 7 and 8, given that the proposed PREA standards are expected to cost the correctional community approximately $213 million in startup costs, and that the monetary benefit of a 1% reduction in the baseline prevalence of prison rape is worth between $157 million and $239 million, the startup costs would be offset in the very first year of implementation, even without regard to the value of the nonmonetary benefits, if the standards achieved reductions of between 0.9 and 1.4 percent. The breakeven point would be even lower if the analysis amortized startup costs over the entire 15 years. Moreover, because the annual ongoing costs of full compliance are estimated to be no more than $544 million beginning in 2013, the proposed standards would have to yield approximately a 2.3–3.5% reduction from the baseline in the average annual prevalence of prison rape for the ongoing costs and the monetized benefits to breakeven, without regard to the value of the nonmonetary benefits.[9]

TABLE 7—BREAKEVEN ANALYSIS USING LOWER-BOUND ASSUMPTIONS OF BENEFIT VALUE BY FACILITY TYPE, IN THOUSANDS OF DOLLARS

| | Value of 1% reduction | Upfront costs | Breakeven percentage | Ongoing costs | Breakeven percentage |
|---|---|---|---|---|---|
| Prisons | $60,000 | $26,304 | 0.44 | $56,407 | 0.94 |
| Jails | 84,500 | 117,742 | 1.39 | 356,618 | 4.22 |
| Juvenile | 12,500 | 24,087 | 1.93 | 78,497 | 6.28 |
| Total | 157,000 | 168,133 | 1.07 | 491,522 | 3.13 |

TABLE 8—BREAKEVEN ANALYSIS USING UPPER-BOUND ASSUMPTIONS OF BENEFIT VALUE BY FACILITY TYPE IN THOUSANDS OF DOLLARS

| | Value of 1% reduction | Upfront costs | Breakeven percentage | Ongoing costs | Breakeven percentage |
|---|---|---|---|---|---|
| Prisons | $90,000 | $26,304 | 0.29 | $56,407 | 0.63 |
| Jails | 126,500 | 117,742 | 0.93 | 356,618 | 2.82 |
| Juvenile | 22,500 | 24,087 | 1.07 | 78,497 | 3.49 |
| Total | 239,000 | 168,133 | 0.70 | 491,522 | 2.06 |

As these tables make clear, even without reference to the nonmonetary benefits of avoiding prison rape and sexual abuse (which are numerous, and of considerable importance) the Department's proposed standards need only be modestly effective in order for the monetized benefits to offset the anticipated compliance costs, both as a whole and with respect to each facility type to which they apply. With respect to prisons, a mere 0.63%–0.94% decrease from the baseline in the average annual prevalence of prison rape and sexual abuse would result in

[9] These figures differ slightly from those depicted in Tables 7 and 8, which include only the $491.5 million in annual ongoing costs attributable to prisons, jails, and juvenile facilities, as opposed to the $544 million in total annual ongoing costs attributable to all five categories (*i.e.,* adding lockups and community confinement facilities). As noted in the preceding footnote, the IRIA does not quantify the benefits that will result from reducing sexual abuse in lockups and community confinement facilities. For this reason, these figures are somewhat conservative because they incorporate the costs, but not the benefits, of reducing sexual abuse in lockups and community confinement facilities.

the monetized benefits of the standards breaking even with their ongoing costs. Such a decrease from the baseline would mean an average of 165–246 fewer forcible rapes per year, 116–173 fewer nonconsensual sexual acts involving pressure or coercion, 120–179 fewer abusive sexual contacts, and 175–261 fewer incidents of willing sex with staff. Even in the jail context, a 0.93% to 1.39% decrease from the baseline in the prevalence of rape would justify the startup costs, while a 2.82%–4.22% decrease would justify the ongoing costs. For jails, a 4.22% decrease from the baseline in the average annual prevalence would translate to 1654 fewer forcible rapes per year, 625 fewer nonconsensual sexual acts involving pressure or coercion, 971 fewer abusive sexual contacts, and 1312 fewer incidents of willing sex with staff.

The Department believes that it is eminently reasonable to expect that implementation of these standards will yield these decreases.

However, the Department cautions that the benefit-cost conclusions in the IRIA are meant to be preliminary and are based upon current estimates. During the comment period, and in advance of preparing the final rules for publication, these estimates will be subject to additional analysis. Moreover, the Department actively seeks the participation of stakeholders in assessing the regulatory impact of its proposed standards and invites public comment on all aspects of the IRIA, both as to the societal benefits of adopting the standards and as to the costs of compliance. Below is a list of specific questions upon which the Department seeks comment, which is not meant to limit any other comments that any interested person may wish to submit. Please note that, although this summary is meant to provide an overview of the IRIA, the questions below presume that the commenter has reviewed the complete IRIA. As noted above, the complete IRIA is available at *http://www.ojp.usdoj.gov/programs/pdfs/prea_nprm_iria.pdf.*

**Questions for Public Comment on Regulatory Impact Assessment**

*Question 38: Has the Department appropriately determined the baseline level of sexual abuse in correctional settings for purposes of assessing the benefit and cost of the proposed PREA standards?*

*Question 39: Are there any reliable, empirical sources of data, other than the BJS studies referenced in the IRIA, that would be appropriate to use in determining the baseline level of prison sexual abuse? If so, please cite such sources and explain whether and why they should be used to supplement or replace the BJS data.*

*Question 40: Are there reliable methods for measuring the extent of underreporting and overreporting in connection with BJS's inmate surveys?*

*Question 41: Are there sources of data that would allow the Department to assess the prevalence of sexual abuse in lockups and community confinement facilities? If so, please supply such data. In the absence of such data, are there available methodologies for including sexual abuse in such settings in the overall estimate of baseline prevalence?*

*Question 42: Has the Department appropriately adjusted the conclusions of studies on the value of rape and sexual abuse generally to account for the differing circumstances posed by sexual abuse in confinement settings?*

*Question 43: Are there any academic studies, data compilations, or established methodologies that can be used to extrapolate from mental health costs associated with sexual abuse in community settings to such costs in confinement settings? Has the Department appropriately estimated that the cost of mental health treatment associated with sexual abuse in confinement settings is twice as large as the corresponding costs in community settings?*

*Question 44: Has the Department correctly identified the quantifiable costs of rape and sexual abuse? Are there other costs of rape and sexual abuse that are capable of quantification, but are not included in the Department's analysis?*

*Question 45: Should the Department adjust the "willingness to pay" figures on which it relies (developed by Professor Mark Cohen for purposes of valuing the benefit to society of an avoided rape [10]) to account for the possibility that some people may believe sexual abuse in confinement facilities is a less pressing problem than it is in society as a whole, and might therefore think that the value of avoiding such an incident in the confinement setting is less than the value of avoiding a similar incident in the non-confinement setting? Likewise, should the Department adjust these figures to take into account the fact that in the general population the vast majority of sexual abuse victims are female, whereas in the confinement setting the victims are overwhelmingly male? Are such differences even relevant for purposes of using the contingent valuation method to monetize the cost of an incident of sexual abuse? If either adjustment were appropriate, how (or on the basis of what empirical data) would the Department go about determining the amount of the adjustment?*

*Question 46: Has the Department appropriately accounted for the increased costs to the victim and to society when the victim is a juvenile? Why or why not?*

*Question 47: Are there available methodologies, or available data from which a methodology can be developed, to assess the unit value of avoiding a nonconsensual sexual act involving pressure or coercion? If so, please supply them. Is the Department's estimate of this unit value (i.e., 20% of the value of a forcible rape) appropriately conservative?*

*Question 48: Are there available methodologies, or available data from which a methodology can be developed, to assess the unit value of avoiding an "abusive sexual contact between inmates," as defined in the IRIA? If so, please supply them. Is the Department's estimate of this unit value (i.e., $375 for adult inmates and $500 for juveniles) appropriately conservative? Would a higher figure be more appropriate? Why or why not?*

*Question 49: Are there any additional nonmonetary benefits of implementing the PREA standards not mentioned in the IRIA?*

*Question 50: Are any of the nonmonetary benefits set forth in the IRIA actually capable of quantification? If so, are there available methodologies for quantifying such benefits or sources of data from which such quantification can be drawn?*

*Question 51: Are there available sources of data relating to the compliance costs associated with the proposed standards, other than the sources cited and relied upon in the IRIA? If so, please provide them.*

*Question 52: Are there available data as to the number of lockups that will be affected by the proposed standards, the number of individuals who are detained in lockups on an annual basis, and/or the anticipated compliance costs for lockups? If so, please provide them.*

*Question 53: Are there available data as to the number of community confinement facilities that will be affected by the proposed standards, the number of individuals who reside or are detained in such facilities on an annual basis, or the anticipated compliance costs for community confinement facilities? If so, please provide them.*

*Question 54: Has the Department appropriately differentiated the*

[10] *See* Cohen *et al., supra* note 7, at 89, 91. Professor Cohen's study was supported by a grant from the National Institute of Justice, a unit of the Department of Justice.

*estimated compliance costs with regard to the different types of confinement facilities (prisons, jails, juvenile facilities, community confinement facilities, and lockups)? If not, why and to what extent should compliance costs be expected to be higher or lower for one type or another?*

*Question 55: Are there additional methodologies for conducting an assessment of the costs of compliance with the proposed standards? If so, please propose them.*

*Question 56: With respect to §§ 115.12, 115.112, 115.212, and 115.312, are there other methods of estimating the extent to which contract renewals and renegotiations over the 15-year period will lead to costs for agencies that adopt the proposed standards?*

*Question 57: Do agencies expect to incur costs associated with proposed §§ 115.13, 115.113, 115.213, and 115.313, notwithstanding the fact that it does not mandate any particular level of staffing or the use of video monitoring? Why or why not? If so, what are the potential cost implications of this standard under various alternative scenarios concerning staffing mandates or video monitoring mandates? What decisions do agencies anticipate making in light of the assessments called for by this standard, and what will it cost to implement those decisions?*

*Question 58: With respect to §§ 115.14, 115.114, 115.214, and 115.314, will the limitations on cross-gender viewing (and any associated retrofitting and construction of privacy panels) impose any costs on agencies? If so, please provide any data from which a cost estimate can be developed for such measures.*

*Question 59: Will the requirement in §§ 115.31, 115.231, and 115.331 that agencies train staff on how to communicate effectively and professionally with lesbian, gay, bisexual, transgender, or intersex residents lead to additional costs for correctional facilities, over and above the costs of other training requirements in the standards? If so, please provide any data from which a cost estimate can be developed for such training.*

*Question 60: Has the Department accounted for all of the costs associated with §§ 115.52, 115.252, and 115.352, dealing with exhaustion of administrative remedies? If not, what additional costs might be incurred, and what data exist from which an estimate of those costs can be developed?*

*Question 61: Is there any basis at this juncture to estimate the compliance costs associated with §§ 115.93, 115.193, 115.293, and 115.393, pertaining to audits? How much do agencies anticipate compliance with this standard is likely to cost on a per-facility basis, under various assumptions as to the type and frequency or breadth of audits?*

*Question 62: Has the Department used the correct assumptions (in particular the assumption of constant cost) in projecting ongoing costs in the out years? Should it adjust its projections for the possibility that the cost of compliance may decrease over time as correctional agencies adopt new innovations that will make their compliance more efficient? If such an adjustment is appropriate, please propose a methodology for doing so and a source of data from which valid predictions as to "learning" can be derived.*

*Question 63: Are there any data showing how the marginal cost of rape reduction is likely to change once various benchmarks of reduction have been achieved? If not, is it appropriate for the Department to assume, for purposes of its breakeven analysis, that the costs and benefits of reducing prison rape are linear, at least within the range relevant to the analysis? Why or why not?*

*Question 64: Are the expectations as to the effectiveness of the proposed standards that are subsumed within the breakeven analysis (e.g., 0.7%–1.7% reduction in baseline prevalence needed to justify startup costs and 2.06%–3.13% reduction required for ongoing costs) reasonable? Why or why not? Are there available data from which reasonable predictions can be made as to the extent to which these proposed standards will be effective in reducing the prevalence of rape and sexual abuse in prisons? If so, please supply them.*

*Substantial Additional Cost Assessment*

As noted above, PREA mandates that the Attorney General may not adopt standards "that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities." 42 U.S.C. 15607(a)(3). However, PREA does not further define this phrase, and various ANPRM commenters submitted differing views as to how it should be read.[11]

A number of agency commenters in response to the ANPRM suggested that "substantial additional costs" should be considered in a vacuum—that is, in the absolute rather than in comparison to some other figure. However, such a reading is inconsistent with the plain language of the statute, which requires that compliance costs be compared against current nationwide correctional expenditures.

The Commission itself, on the other hand, proposed a very different reading in its ANPRM comment. Enclosing a letter from former Senate Judiciary Committee staffer Robert Toone, Letter for Hon. Reggie B. Walton, United States District Court for the District of Columbia, *et al.* from Robert Toone, Senate Judiciary Committee (Apr. 15, 2010) ("Toone Letter"), the Commission would interpret the phrase "substantial additional costs" in accordance with two principles. First, the Commission proposes that the Department should discount from its calculations any costs necessary to bring a particular facility into compliance with its Eighth Amendment obligations and should only subsume within "substantial additional costs" those expenses that the standards impose over and above this level. According to this argument, because Congress intended that PREA promote, not weaken, enforcement of inmates' constitutional rights to safe conditions of confinement, "any application of Section 8(a)(3) should consider only those additional costs that a proposed national standard would impose on constitutionally compliant prisons and jails." Toone Letter at 2.

Second, the Commission argues that "substantial additional cost" should be assessed on a per-standard rather than an aggregate basis. In other words, "[o]nly a national standard that would, on its own, impose 'substantial additional costs' in relation to total current correctional expenditures is prohibited under PREA." *Id.* at 3.

In drafting its proposed rule, the Department has chosen not to adopt these interpretations. The first argument

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[11] The legislative history of PREA appears to contain only two mentions of the "substantial additional costs" provision. The cost estimate that was prepared by the Congressional Budget Office for the House version of PREA, H.R.1707, states the following:

"This bill would direct the Attorney General to adopt national standards for the prevention of prison rape. Though the language specifies that those standards may not place substantial additional costs on Federal, State, or local prison authorities, CBO has no basis for estimating what those standards might be or what costs State and local governments would face in complying with them."

H.R. Rep. No. 108–219, at 16 (2003). The House Judiciary Committee Report explains what would eventually become 42 U.S.C. 15607(a)(3) as follows:

"The Attorney General is required to establish a rule adopting national standards based on recommendations of the Commission, but shall not establish national standards that would impose substantial increases in costs for Federal, State, or local authorities. The Attorney General shall transmit the final rule to the governor of each State."

*Id.* at 20.

is in tension with the plain language of the statute and is in any event impractical to apply. The PREA standards will apply to almost 13,000 facilities across the country, operated by thousands of jurisdictions and entities. It is not possible to determine which facilities are "constitutionally compliant" and which are not, in part because constitutional non-compliance often becomes apparent only after the fact—that is, after a violation. Nor is it possible to calculate what subset of the total cost of compliance with the standards is directed towards bringing facilities into compliance with the Constitution and what subset constitutes expenditures over and above the constitutional minimum.

Nor does the Department believe that the impact of the standards should be assessed individually. Admittedly, the statute uses the singular in providing that "[t]he Attorney General shall not establish *a national standard* under this section that would impose substantial additional costs . * * *" 42 U.S.C. 15607(a)(3) (emphasis added). However, such a reading would yield absurd results. On the Commission's proposed reading, the Attorney General is barred from imposing one extremely expensive standard yet is allowed to promulgate myriad smaller standards that, when added together, would be just as expensive. There is no reason to assume that Congress intended such a result. A more logical assumption is that Congress was concerned with the costs of the standards as a whole.[12]

The Department thus interprets "substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities" as costs that impose considerable, large, and unreasonable burdens on those authorities in a given year, in comparison to the total amount spent that year by correctional authorities nationwide. The first half of the comparator—the total costs imposed on Federal, State, and local prison authorities collectively, as the result of complying with the PREA standards taken as a whole—is calculated in the IRIA and depicted in Table 4. The second half of the comparator—the total annual expenditures of Federal, State, and local prison authorities on corrections—amounted to $74.2 billion in 2007, the most recent year for which figures are available. *See* BJS, Justice Expenditure and Employment Extracts 2007, "Table 1: percent distribution of expenditure for the justice system by type of government, fiscal year 2007" (Sep. 20, 2010), available at *http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2315;* Direct Expenditures by Criminal Justice Function, 1982–2006, in *Justice Expenditure and Employment Extracts,* available at *http://bjs.ojp.usdoj.gov/content/glance/tables/exptyptab.cfm*.

Tables 9A and 9B compare the cost of compliance with the standards from 2012 through 2026 to projected total national expenditures on corrections over the same period of time. During the 15 years from 1993 to 2007, correctional expenditures grew at an annual rate of 5.43%. *Id.* Tables 9A and 9B assume growth at that same rate from 2008–2026, applying alternative discount rates of 3% (in Table 9A) and 7% (in Table 9B) so as to render, in the second column, the ensuing inflation-adjusted expenditure estimates in present value dollars. The third column shows the total expected compliance costs for each year, as adjusted for inflation and discounted to present value, and the fourth column presents expected compliance costs as a percentage of national correctional expenditures. (The figures for expected nationwide compliance costs depicted in Tables 9A and 9B differ from those in Tables 4 and 5 because the former are adjusted for inflation whereas the latter are not.)

Using a 3% discount rate (Table 9A), the ratio of total costs associated with the proposed standards to total national correctional expenditures never exceeds 0.63% in any given year and is as low as 0.16% in some years. Using a 7% discount rate (Table 9B), the range extends from 0.03% to 0.72%. Given the smallness of these percentages, we do not believe that the standards can be said to impose considerable, large, or unreasonable cost burdens on correctional authorities in any given year. Therefore, the standards do not impose "substantial additional costs compared to the costs * * * expended by Federal, State, and local prison authorities." 42 U.S.C. 15607(a)(3).

TABLE 9A—TOTAL ANNUAL COMPLIANCE COSTS, 2012–2026 PROJECTIONS, AS A PERCENTAGE OF TOTAL ANNUAL NATIONWIDE EXPENDITURES ON CORRECTIONS ADJUSTED FOR INFLATION AT 5.4% ANNUALLY AND DISCOUNTED TO PRESENT VALUE AT 3% IN THOUSANDS OF DOLLARS

| Year | Total corr. exp. | Compliance costs | % |
|---|---|---|---|
| 2012 | $91,104,068 | $213,346 | 0.2342 |
| 2013 | 93,253,416 | 574,013 | 0.6155 |
| 2014 | 95,453,473 | 599,847 | 0.6284 |
| 2015 | 97,705,433 | 561,881 | 0.5751 |
| 2016 | 100,010,523 | 510,989 | 0.5109 |
| 2017 | 102,369,994 | 464,707 | 0.4539 |
| 2018 | 104,785,131 | 422,616 | 0.4033 |
| 2019 | 107,257,246 | 384,338 | 0.3583 |
| 2020 | 109,787,684 | 349,527 | 0.3184 |
| 2021 | 112,377,821 | 317,869 | 0.2829 |
| 2022 | 115,029,064 | 289,078 | 0.2513 |
| 2023 | 117,742,857 | 262,895 | 0.2233 |
| 2024 | 120,520,674 | 239,083 | 0.1984 |
| 2025 | 123,364,026 | 217,429 | 0.1762 |
| 2026 | 126,274,459 | 197,735 | 0.1566 |

[12] Indeed, the discussion of "substantial additional costs" in PREA's legislative history refers in the plural to "national standards." *See supra* n.11. The Toone Letter states that notes that "before introducing the bill, the sponsors of PREA changed the language of Section 8(a)(3) from 'significant additional costs' (as originally drafted) to 'substantial additional costs.'" However, the fact that the sponsors of a piece of legislation revised its language prior to introducing the bill does not bear on how the remaining members of Congress construed the legislation when they voted to enact it. Moreover, it is far from evident that this wording change would impact the interpretation of the statute.

TABLE 9A—TOTAL ANNUAL COMPLIANCE COSTS, 2012–2026 PROJECTIONS, AS A PERCENTAGE OF TOTAL ANNUAL NATIONWIDE EXPENDITURES ON CORRECTIONS ADJUSTED FOR INFLATION AT 5.4% ANNUALLY AND DISCOUNTED TO PRESENT VALUE AT 3% IN THOUSANDS OF DOLLARS—Continued

| Year | Total corr. exp. | Compliance costs | % |
|---|---|---|---|
| Total | 1,617,035,869 | 5,605,353 | 0.3466 |
| Average | 107,802,391 | 373,690 | 0.3466 |

TABLE 9B—TOTAL ANNUAL COMPLIANCE COSTS, 2012–2026 PROJECTIONS, AS A PERCENTAGE OF TOTAL ANNUAL NATIONWIDE EXPENDITURES ON CORRECTIONS ADJUSTED FOR INFLATION AT 5.4% ANNUALLY AND DISCOUNTED TO PRESENT VALUE AT 7% IN THOUSANDS OF DOLLARS

| Year | Total corr. exp. | Compliance costs | % |
|---|---|---|---|
| 2012 | $84,419,867 | $213,346 | 0.2527 |
| 2013 | 83,181,183 | 574,013 | 0.6901 |
| 2014 | 81,960,674 | 593,650 | 0.7243 |
| 2015 | 80,758,073 | 477,473 | 0.5912 |
| 2016 | 79,573,119 | 358,908 | 0.4510 |
| 2017 | 78,405,550 | 269,785 | 0.3441 |
| 2018 | 77,255,114 | 202,792 | 0.2625 |
| 2019 | 76,121,557 | 152,435 | 0.2003 |
| 2020 | 75,004,634 | 114,583 | 0.1528 |
| 2021 | 73,904,098 | 86,130 | 0.1165 |
| 2022 | 72,819,711 | 64,742 | 0.0889 |
| 2023 | 71,751,235 | 48,666 | 0.0678 |
| 2024 | 70,698,437 | 36,581 | 0.0517 |
| 2025 | 69,661,086 | 27,497 | 0.0395 |
| 2026 | 68,638,956 | 20,669 | 0.0301 |
| Total | 1,144,153,294 | 3,241,270 | 0.2833 |
| Average | 76,276,886 | 216,085 | 0.2833 |

*Paperwork Reduction Act*

The Prison Rape Elimination Act of 2003 requires the Department of Justice to adopt national standards for the detection, prevention, reduction, and punishment of prison rape. These national standards will require covered facilities to retain certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, and investigations, as well as to collect and retain certain specified information relating to allegations of sexual abuse within the facility.

The Department of Justice will be submitting the following information collection request to the Office of Management and Budget for review and clearance in accordance with the review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, should be directed to Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue, NW., Room 4252, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In particular, the Department requests comments on the recordkeeping cost burden imposed by this rule and will use the information gained through such comments to assist in calculating the cost burden.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Prison Rape Elimination Act Regulations.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form. Component: 1105.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* State governments, local governments.

*Other:* None.

*Abstract:* The Department of Justice is publishing a notice of proposed rulemaking to adopt national standards for the detection, prevention, reduction, and punishment of sexual abuse in confinement settings pursuant to the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. 15601 *et seq.* These national standards will require covered facilities to retain certain specified

information relating to sexual abuse prevention planning, responsive planning, education and training, and investigations, as well as to collect and retain certain specified information relating to allegations of sexual abuse within the facility. Covered facilities include: State and local jails, prisons, lockups, community confinement facilities, and juvenile facilities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to keep the required records is: 11,826 respondents; 158,455 hours.

The average annual burden hour per respondent is 13.4 hours, most of which is the additional time keeping required records, if such records are not already being maintained by the facility for its own administrative purposes.

(6) An estimate of the total public burden (in hours) associated with the collection: 158,455 hours.

At present, covered facilities are required to retain certain sexual abuse incident data. This data is already covered by an information collection maintained by the Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, as part of its Survey of Sexual Violence; OMB Control No. 1121–0292. The Survey of Sexual Violence is the only national data collection for facility-reported information on sexual abuse within correctional facilities, characteristics of the victims and perpetrators, circumstances surrounding the incidents, and how incidents are reported, tracked, and adjudicated. Please *see* the following sections:

| Subpart A—Prisons and jails | Subpart B—Lockups | Subpart C—Community corrections | Subpart D—Juvenile facilities |
|---|---|---|---|
| 115.87 | 115.187 | 115.287 | 115.387 |
| 115.88 | 115.188 | 115.288 | 115.388 |
| 115.89 | 115.189 | 115.289 | 115.389 |

In particular, please *see* the references in 115.87(c), 115.187(c), 115.287(c), and 115.387(c) to the existing SSV collection.

The balance of the recordkeeping requirements set forth by this rule are new requirements which will require a new OMB Control Number. The Department is seeking comment on these new requirements as part of this NPRM. These new requirements will require covered facilities to retain certain specified information relating to sexual abuse prevention planning, responsive planning, education and training, investigations and to collect and retain certain specified information relating to allegations of sexual abuse within the facility. Please *see* the following sections of the proposed rule:

| Subpart A—Prisons and jails | Subpart B—Lockups | Subpart C—Community corrections | Subpart D—Juvenile facilities |
|---|---|---|---|
| 115.14(b) | 115.114(b) | 115.214(b) | 115.314(b) |
| 115.22(c) | ..... | 115.222(c) | 115.322(c) |
| 115.31(d) | 115.131(c) | 115.231(d) | 115.331(d) |
| 115.32(c) | ..... | 115.232(c) | 115.332(c) |
| 115.33(e) | ..... | 115.233(e) | 115.333(e) |
| 115.35(c) | ..... | 115.235(c) | 115.335(c) |
| 115.71(h) | 115.171(h) | 115.271(h) | 115.371(h) |

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

**List of Subjects in 28 CFR Part 115**

Community correction facilities, Crime, Jails, Juvenile facilities, Lockups, Prisons, Prisoners.

Accordingly, Part 115 of Title 28 of the Code of Federal Regulations is proposed to be added as follows:

## PART 115—PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS

Sec.

115.5 General definitions.
115.6 Definitions related to sexual abuse.

**Subpart A—Standards for Adult Prisons and Jails**

**Prevention Planning**

115.11 Zero tolerance of sexual abuse and sexual harassment; Prison Rape Elimination Act (PREA) coordinator.
115.12 Contracting with other entities for the confinement of inmates.
115.13 Supervision and monitoring.
115.14 Limits to cross-gender viewing and searches.
115.15 Accommodating inmates with special needs.
115.16 Hiring and promotion decisions.
115.17 Upgrades to facilities and technologies.

**Responsive Planning**

115.21 Evidence protocol and forensic medical exams.
115.22 Agreements with outside public entities and community service providers.
115.23 Policies to ensure investigation of allegations.

**Training and Education**

115.31 Employee training.
115.32 Volunteer and contractor training.
115.33 Inmate education.
115.34 Specialized training: Investigations.
115.35 Specialized training: Medical and mental health care.

**Screening for Risk of Sexual Victimization and Abusiveness**

115.41 Screening for risk of victimization and abusiveness.
115.42 Use of screening information.
115.43 Protective custody.

**Reporting**

115.51 Inmate reporting.
115.52 Exhaustion of administrative remedies.
115.53 Inmate access to outside confidential support services.
115.54 Third-party reporting.

**Official Response Following an Inmate Report**

115.61 Staff and agency reporting duties.

115.62 Reporting to other confinement facilities.
115.63 Staff first responder duties.
115.64 Coordinated response.
115.65 Agency protection against retaliation.
115.66 Post-allegation protective custody.

**Investigations**

115.71 Criminal and administrative agency investigations.
115.72 Evidentiary standard for administrative investigations.
115.73 Reporting to inmates.

**Discipline**

115.76 Disciplinary sanctions for staff.
115.77 Disciplinary sanctions for inmates.
115.81 Medical and mental health screenings; history of sexual abuse.

**Medical and Mental Care**

115.82 Access to emergency medical and mental health services.
115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

**Data Collection and Review**

115.86 Sexual abuse incident reviews.
115.87 Data collection.
115.88 Data review for corrective action.
115.89 Data storage, publication, and destruction.

**Audits**

115.93 Audits of standards.

**Subpart B—Standards for Lockups**

**Prevention Planning**

115.111 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.
115.112 Contracting with other entities for the confinement of detainees.
115.113 Supervision and monitoring.
115.114 Limits to cross-gender viewing and searches.
115.115 Accommodating detainees with special needs.
115.116 Hiring and promotion decisions.
115.117 Upgrades to facilities and technologies.

**Responsiveness Training**

115.121 Evidence protocol and forensic medical exams.
115.123 Policies to ensure investigation of allegations.

**Training and Education**

115.131 Employee and volunteer training.
115.132 Detainee, attorney, contractor, and inmate worker notification of the agency's zero-tolerance policy.
115.134 Specialized training; investigations.

**Reporting**

115.151 Detainee reporting.
115.154 Third-party reporting.

**Official Response Following a Detainee Report**

115.161 Staff and agency reporting duties.
115.162 Reporting to other confinement facilities.
115.163 Staff first responder duties.
115.164 Coordinated response.
115.165 Agency protection against retaliation.

**Investigations**

115.171 Criminal and administrative agency investigations.
115.172 Evidentiary standard for administrative investigations.

**Discipline**

115.176 Disciplinary sanctions for staff.
115.177 Referrals for prosecution for detainee-on-detainee sexual abuse.

**Medical Care**

115.182 Access to emergency medical services.

**Data Collection and Review**

115.186 Sexual abuse incident reviews.
115.187 Data collection.
115.188 Data review for corrective action.
115.189 Data storage, publication, and destruction.

**Audits**

115.193 Audits of standards.

**Subpart C—Standards for Community Confinement Facilities**

**Prevention Planning**

115.211 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.
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**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 15601–15609.

### § 115.5 General definitions.

For purposes of this part, the term—

*Agency* means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

*Agency head* means the principal official of an agency.

*Community confinement facility* means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers) in which offenders or defendants reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.

*Contractor* means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

*Detainee* means any person detained in a lockup, regardless of adjudication status.

*Employee* means a person who works directly for the agency or facility.

*Facility* means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

*Facility head* means the principal official of a facility.

*Inmate* means any person incarcerated or detained in a prison or jail.

*Jail* means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.

*Juvenile* means any person under the age of 18, unless otherwise defined by State law.

*Juvenile facility* means a facility primarily used for the confinement of juveniles.

*Law enforcement staff* means employees responsible for the supervision and control of detainees in lockups.

*Lockup* means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

(1) Under the control of a law enforcement, court, or custodial officer; and

(2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

*Medical practitioner* means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A "qualified medical practitioner" refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

*Mental health practitioner* means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A "qualified mental health practitioner" refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

*Pat-down search* means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.

*Prison* means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

*Resident* means any person confined or detained in a juvenile facility or in a community confinement facility.

*Security staff* means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.

*Staff* means employees.

*Strip search* means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

*Substantiated allegation* means an allegation that was investigated and determined to have occurred.

*Unfounded allegation* means an allegation that was investigated and determined not to have occurred.

*Unsubstantiated allegation* means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

*Volunteer* means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

### § 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

*Sexual abuse* includes—

(1) Sexual abuse by another inmate, detainee, or resident; and

(2) Sexual abuse of an inmate by a staff member, contractor, or volunteer.

*Sexual abuse by another inmate, detainee, or resident* includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person, excluding incidents in which the intent of the sexual contact is solely to harm or debilitate rather than to sexually exploit.

*Sexual abuse by a staff member, contractor, or volunteer* includes—

(1) Sexual touching by a staff member, contractor, or volunteer;

(2) Any attempted, threatened, or requested sexual touching by a staff member, contractor, or volunteer;

(3) Indecent exposure by a staff member, contractor, or volunteer; and

(4) Voyeurism by a staff member, contractor, or volunteer.

*Sexual touching by a staff member, contractor, or volunteer* includes any of the following acts, with or without consent:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person, with the intent to abuse, arouse or gratify sexual desire.

*Indecent exposure by a staff member, contractor, or volunteer* means the display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.

*Sexual harassment* includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

*Voyeurism by a staff member, contractor, or volunteer* means an invasion of an inmate's privacy by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions, and distributing or publishing them.

## Subpart A—Standards for Adult Prisons and Jails

### Prevention Planning

#### § 115.11 Zero tolerance of sexual abuse and sexual harassment; Prison Rape Elimination Act (PREA) coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) The PREA coordinator shall be a full-time position in all agencies that operate facilities whose total rated capacity exceeds 1000 inmates, but may be designated as a part-time position in agencies whose total rated capacity does not exceed 1000 inmates.

(d) An agency whose facilities have a total rated capacity exceeding 1000 inmates shall also designate a PREA coordinator for each facility, who may be full-time or part-time.

#### § 115.12 Contracting with other entities for the confinement of inmates.

(a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contracts or contract renewals shall provide for agency contract monitoring to ensure that the contractor is complying with PREA standards.

#### § 115.13 Supervision and monitoring.

(a) For each facility, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating such levels, agencies shall take into consideration the physical layout of each facility, the composition of the inmate population, and any other relevant factors.

(b) The facility shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in paragraph (a) of this section are not attained.

(c) Each year, the facility shall assess, and determine whether adjustments are needed to:

(1) The staffing levels established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns; and

(3) The agency's deployment of video monitoring systems and other technologies.

(d) Each prison facility, and each jail facility whose rated capacity exceeds 500 inmates, shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts.

#### § 115.14 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or visual body cavity searches except in case of emergency or when performed by medical practitioners.

(b) The facility shall document all such cross-gender searches.

(c) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine cell checks.

(d) The facility shall not examine a transgender inmate to determine the inmate's genital status unless the inmate's genital status is unknown. Such examination shall be conducted in private by a medical practitioner.

(e) Following classification, the agency shall implement procedures to exempt from non-emergency cross-gender pat-down searches those inmates who have suffered documented prior cross-gender sexual abuse while incarcerated.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

**§ 115.15 Accommodating inmates with special needs.**

(a) The agency shall ensure that inmates who are limited English proficient, deaf, or disabled are able to report sexual abuse and sexual harassment to staff directly or through other established reporting mechanisms, such as abuse hotlines, without relying on inmate interpreters, absent exigent circumstances.

(b) The agency shall make accommodations to convey verbally all written information about sexual abuse policies, including how to report sexual abuse and sexual harassment, to inmates who have limited reading skills or who are visually impaired.

**§ 115.16 Hiring and promotion decisions.**

(a) The agency shall not hire or promote anyone who has engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) Before hiring new employees, the agency shall:

(1) Perform a criminal background check; and

(2) Consistent with Federal, State, and local law, make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse.

(c) The agency shall either conduct criminal background checks of current employees at least every five years or have in place a system for otherwise capturing such information for current employees.

(d) The agency shall ask all applicants and employees directly about previous misconduct in written applications for hiring or promotions, in interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees.

(e) Material omissions, or the provision of materially false information, shall be grounds for termination.

(f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**§ 115.17 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

**Responsive Planning**

**§ 115.21 Evidence protocol and forensic medical exams.**

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be adapted from or otherwise based on the 2004 U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2010.

(c) The agency shall offer all victims of sexual abuse access to forensic medical exams performed by qualified medical practitioners, whether onsite or at an outside facility, without financial cost, where evidentiarily or medically appropriate.

(d) The agency shall make available to the victim a qualified staff member or a victim advocate from a community-based organization that provides services to sexual abuse victims.

(e) As requested by the victim, the qualified staff member or victim advocate shall accompany and support the victim through the forensic medical exam process and the investigatory process and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of these policies.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to: (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in institutional settings; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in institutional settings.

(h) For the purposes of this standard, a qualified staff member shall be an individual who is employed by a facility and has received education concerning sexual assault and forensic examination issues in general.

**§ 115.22 Agreements with outside public entities and community service providers.**

(a) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with an outside public entity or office that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials pursuant to § 115.51, unless the agency enables inmates to make such reports to an internal entity that is operationally independent from the agency's chain of command, such as an inspector general or ombudsperson who reports directly to the agency head.

(b) The agency also shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse.

(c) The agency shall maintain copies of agreements or documentation showing attempts to enter into agreements.

**§ 115.23 Policies to ensure investigation of allegations.**

(a) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior, and shall publish such policy on its Web site.

(b) If a separate entity is responsible for conducting criminal investigations, such Web site publication shall describe the responsibilities of both the agency and the investigating entity.

(c) Any State entity responsible for conducting criminal or administrative investigations of sexual abuse in institutional settings shall have in place a policy governing the conduct of such investigations.

(d) Any Department of Justice component responsible for conducting criminal or administrative investigations of sexual abuse in institutional settings shall have in place a policy governing the conduct of such investigations.

**Training and Education**

**§ 115.31 Employee training.**

(a) The agency shall train all employees who may have contact with inmates on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse prevention, detection, reporting, and response policies and procedures;

(3) Inmates' right to be free from sexual abuse and sexual harassment;

(4) The right of inmates and employees to be free from retaliation for reporting sexual abuse;

(5) The dynamics of sexual abuse in confinement;

(6) The common reactions of sexual abuse victims;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with inmates; and

(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, or intersex inmates.

(b) Such training shall be tailored to the gender of the inmates at the employee's facility.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all employees to ensure that they know the agency's current sexual abuse policies and procedures.

(d) The agency shall document, via employee signature or electronic verification, that employees understand the training they have received.

**§ 115.32 Volunteer and contractor training.**

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report sexual abuse.

(c) The agency shall maintain documentation confirming that volunteer*s* and contractor*s* understand the training they have received.

**§ 115.33 Inmate education.**

(a) During the intake process, staff shall inform inmates of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or via video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such abuse or harassment, and regarding agency sexual abuse response policies and procedures.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and the agency shall provide refresher information to all inmates at least annually and whenever an inmate is transferred to a different facility, to ensure that they know the agency's current sexual abuse policies and procedures.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

**§ 115.34 Specialized training: Investigations.**

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

**§ 115.35 Specialized training: Medical and mental health care.**

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to victims of sexual abuse; and

(4) How and to whom to report allegations or suspicions of sexual abuse.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

**Screening for Risk of Sexual Victimization and Abusiveness**

**§ 115.41 Screening for risk of victimization and abusiveness.**

(a) All inmates shall be screened during the intake process and during the initial classification process to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Such screening shall be conducted using an objective screening instrument, blank copies of which shall be made available to the public upon request.

(c) The initial classification process shall consider, at a minimum, the following criteria to screen inmates for risk of sexual victimization:

(1) Whether the inmate has a mental, physical, or developmental disability;

(2) The age of the inmate, including whether the inmate is a juvenile;

(3) The physical build of the inmate;

(4) Whether the inmate has previously been incarcerated;

(5) Whether the inmate's criminal history is exclusively nonviolent;

(6) Whether the inmate has prior convictions for sex offenses against an adult or child;

(7) Whether the inmate is gay, lesbian, bisexual, transgender, or intersex;

(8) Whether the inmate has previously experienced sexual victimization;

(9) The inmate's own perception of vulnerability; and

(10) Whether the inmate is detained solely on civil immigration charges.

(d) The initial classification process shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in screening inmates for risk of being sexually abusive.

(e) An agency shall conduct such initial classification within 30 days of the inmate's confinement.

(f) Inmates shall be rescreened when warranted due to a referral, request, or incident of sexual victimization. Inmates may not be disciplined for refusing to answer particular questions or for not disclosing complete information.

(g) The agency shall implement appropriate controls on the dissemination of responses to screening questions within the facility in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

**§ 115.42 Use of screening information.**

(a) The agency shall use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for such an inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) Such inmate's own views with respect to his or her own safety shall be given serious consideration.

**§ 115.43 Protective custody.**

(a) Inmates at high risk for sexual victimization may be placed in involuntary segregated housing only after an assessment of all available alternatives has been made, and then only until an alternative means of separation from likely abusers can be arranged.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, education, and work opportunities to the extent possible.

(c) The agency shall not ordinarily assign such an inmate to segregated housing involuntarily for a period exceeding 90 days.

(d) If an extension is necessary, the agency shall clearly document:

(1) The basis for the agency's concern for the inmate's safety; and (2) The reason why no alternative means of separation can be arranged.

(e) Every 90 days, the agency shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

**Reporting**

**§ 115.51 Inmate reporting.**

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse.

(b) Pursuant to § 115.22, the agency shall also make its best efforts to provide at least one way for inmates to report abuse or harassment to an outside governmental entity that is not affiliated with the agency or that is operationally independent from agency leadership, such as an inspector general or ombudsperson, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

**§ 115.52 Exhaustion of administrative remedies.**

(a)(1) The agency shall provide an inmate a minimum of 20 days following the occurrence of an alleged incident of sexual abuse to file a grievance regarding such incident.

(2) The agency shall grant an extension of no less than 90 days from the deadline for filing such a grievance when the inmate provides documentation, such as from a medical or mental health provider or counselor, that filing a grievance within the normal time limit was or would likely be impractical, whether due to physical or psychological trauma arising out of an incident of sexual abuse, the inmate having been held for periods of time outside of the facility, or other circumstances indicating impracticality. Such an extension shall be afforded retroactively to an inmate whose grievance is filed subsequent to the normal filing deadline.

(b)(1) The agency shall issue a final agency decision on the merits of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates in appealing any adverse ruling.

(3) An agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision.

(4) The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(c)(1) Whenever an agency is notified of an allegation that an inmate has been sexually abused, other than by notification from another inmate, it shall consider such notification as a grievance or request for informal resolution submitted on behalf of the alleged inmate victim for purposes of initiating the agency administrative remedy process.

(2) The agency shall inform the alleged victim that a grievance or request for informal resolution has been submitted on his or her behalf and shall process it under the agency's normal procedures unless the alleged victim expressly requests that it not be processed. The agency shall document any such request.

(3) The agency may require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(4) The agency shall also establish procedures to allow the parent or legal guardian of a juvenile to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile.

(d)(1) An agency shall establish procedures for the filing of an emergency grievance where an inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving such an emergency grievance, the agency shall immediately forward it to a level of review at which corrective action may be taken, provide an initial response within 48 hours, and a final agency decision within five calendar days.

(3) The agency may opt not to take such actions if it determines that no

emergency exists, in which case it may either:

(i) Process the grievance as a normal grievance; or

(ii) Return the grievance to the inmate, and require the inmate to follow the agency's normal grievance procedures.

(4) The agency shall provide a written explanation of why the grievance does not qualify as an emergency.

(5) An agency may discipline an inmate for intentionally filing an emergency grievance where no emergency exists.

**§ 115.53 Inmate access to outside confidential support services.**

(a) In addition to providing onsite mental health care services, the facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and by enabling reasonable communication between inmates and these organizations, as confidential as possible, consistent with agency security needs.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored.

**§ 115.54 Third-party reporting.**

The facility shall establish a method to receive third-party reports of sexual abuse and shall distribute publicly information on how to report sexual abuse on behalf of an inmate.

**Official Response Following an Inmate Report**

**§ 115.61 Staff and agency reporting duties.**

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against inmates or staff who reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report at the initiation of services.

(d) If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse, including third-party and anonymous reports, to the facility's designated investigators.

**§ 115.62 Reporting to other confinement facilities.**

(a) Within 14 days of receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify in writing the head of the facility or appropriate central office of the agency where the alleged abuse occurred.

(b) The facility head or central office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

**§ 115.63 Staff first responder duties.**

(a) Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Seal and preserve any crime scene; and

(3) Request the victim not to take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request the victim not to take any actions that could destroy physical evidence, and then notify security staff.

**§ 115.64 Coordinated response.**

The facility shall coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

**§ 115.65 Agency protection against retaliation.**

(a) The agency shall protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff.

(b) The agency shall employ multiple protection measures, including housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) The agency shall monitor the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations, including any inmate disciplinary reports, housing, or program changes, for at least 90 days following their report or cooperation, to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with victims pending an investigation.

**§ 115.66 Post-allegation protective custody.**

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

**Investigations**

**§ 115.71 Criminal and administrative agency investigations.**

(a) When the agency conducts its own investigations into allegations of sexual abuse, it shall do so promptly, thoroughly, and objectively, using investigators who have received special training in sexual abuse investigations pursuant to § 115.34, and shall investigate all allegations of sexual abuse, including third-party and anonymous reports.

(b) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(c) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to

whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(d) The credibility of a victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff.

(e) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act facilitated the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative findings.

(f) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(g) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(h) The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(i) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(j) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(k) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

#### § 115.72 Evidentiary standard for administrative investigations.

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

#### § 115.73 Reporting to inmates.

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate's allegation that a staff member has committed sexual abuse, the agency shall subsequently inform the inmate whenever:

(1) The staff member is no longer posted within the inmate's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) The requirement to inform in inmate shall not apply to allegations that have been determined to be unfounded.

### Discipline

#### § 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching.

(c) Sanctions shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

#### § 115.77 Disciplinary sanctions for inmates.

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) Any prohibition on inmate-on-inmate sexual activity shall not consider consensual sexual activity to constitute sexual abuse.

### Medical and Mental Care

#### § 115.81 Medical and mental health screenings; history of sexual abuse.

(a) All prisons shall ask inmates about prior sexual victimization and abusiveness during intake or classification screenings.

(b) If a prison inmate discloses prior sexual victimization or abusiveness, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up reception with a medical or mental health practitioner within 14 days of the intake screening.

(c) All jails shall ask inmates about prior sexual victimization during the intake process or classification screenings.

(d) If a jail inmate discloses prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up reception with a medical or mental health practitioner within 14 days of the intake screening.

(e) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments.

(f) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an

institutional setting, unless the inmate is under the age of 18.

**§ 115.82 Access to emergency medical and mental health services.**

(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser.

(c) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.63 and shall immediately notify the appropriate medical and mental health practitioners.

(d) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate.

**§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.**

(a) The facility shall offer ongoing medical and mental health evaluation and treatment to all inmates who, during their present term of incarceration, have been victimized by sexual abuse.

(b) The evaluation and treatment of sexual abuse victims shall include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide inmate victims of sexual abuse with medical and mental health services consistent with the community level of care.

(d) All prisons shall conduct a mental health evaluation of all known inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health practitioners.

(e) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(f) If pregnancy results, such victims shall receive timely information about and access to all pregnancy-related medical services that are lawful in the community.

**Data Collection and Review**

**§ 115.86 Sexual abuse incident reviews.**

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) The review team shall include upper management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(c) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated or otherwise caused by the perpetrator or victim's race, ethnicity, sexual orientation, gang affiliation, or other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings and any recommendations for improvement and submit such report to the facility head and PREA coordinator, if any.

**§ 115.87 Data collection.**

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice's Bureau of Justice Statistics.

(d) The agency shall collect data from multiple sources, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(f) Upon request, the agency shall provide all such data from the previous year to the Department of Justice no later than June 30.

**§ 115.88 Data review for corrective action.**

(a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

**§ 115.89 Data storage, publication, and destruction.**

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

**Audits**

**§ 115.93 Audits of standards.**

(a) An audit shall be considered independent if it is conducted by:

(1) A correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government;

(2) An auditing entity that is within the agency but separate from its normal chain of command, such as an inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board; or

(3) Other outside individuals with relevant experience.

(b) No audit may be conducted by an auditor who has received financial compensation from the agency being audited within the three years prior to the agency's retention of the auditor.

(c) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent audits.

(d) All auditors shall be certified by the Department of Justice to conduct such audits, and shall be re-certified every three years.

(e) The Department of Justice shall prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and inmates. The Department of Justice also shall prescribe the minimum qualifications for auditors.

(f) The agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and inmates to conduct a comprehensive audit.

(g) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one or is otherwise made readily available to the public.

## Subpart B—Standards for Lockups

### Prevention Planning

#### § 115.111 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator, who may be full-time or part-time, to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its lockups.

#### § 115.112 Contracting with other entities for the confinement of detainees.

(a) A law enforcement agency that contracts for the confinement of its lockup detainees in lockups operated by private agencies or other entities, including other government agencies, shall include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contracts or contract renewals shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

#### § 115.113 Supervision and monitoring.

(a) For each lockup, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect detainees against sexual abuse. In calculating such levels, agencies shall take into consideration the physical layout of each lockup, the composition of the detainee population, and any other relevant factors.

(b) The lockup shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in paragraph (a) of this section are not attained.

(c) Each year, the lockup shall assess, and determine whether adjustments are needed to:

(1) The staffing levels established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns; and

(3) The agency's deployment of video monitoring systems and other technologies.

(d) Any intake screening or assessment shall include consideration of a detainee's potential vulnerability to sexual abuse.

(e) If vulnerable detainees are identified, law enforcement staff shall provide such detainees with heightened protection, to include continuous direct sight and sound supervision, single-cell housing, or placement in a cell actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is determined to be feasible.

(f) If the lockup does not perform intake screenings or assessments, it shall have a policy and practice designed to provide heightened protection to a detainee to prevent sexual abuse whenever a law enforcement staff member observes any physical or behavioral characteristics of a detainee that suggest the detainee may be vulnerable to such abuse.

#### § 115.114 Limits to cross-gender viewing and searches.

(a) The lockup shall not conduct cross-gender strip searches or visual body cavity searches except in case of emergency or when performed by medical practitioners.

(b) The lockup shall document all such cross-gender searches.

(c) The lockup shall implement policies and procedures that enable detainees to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine cell checks.

(d) The lockup shall not examine a transgender detainee to determine the detainee's genital status unless the detainee's genital status is unknown. Such examination shall be conducted in private by a medical practitioner.

(e) The agency shall train law enforcement staff in how to conduct cross-gender pat-down searches, and searches of transgender detainees, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

#### § 115.115 Accommodating detainees with special needs.

(a) The agency shall ensure that detainees who are limited English proficient, deaf, or disabled are able to report sexual abuse and sexual harassment to staff directly, or through other established reporting mechanisms, such as abuse hotlines, without relying on detainee interpreters, absent exigent circumstances.

(b) The agency shall make accommodations to convey verbally all written information about sexual abuse policies, including how to report sexual abuse and sexual harassment, to detainees who have limited reading skills or who are visually impaired.

#### § 115.116 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who has engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) Before hiring new employees, the agency shall:

(1) Perform a criminal background check; and

(2) Consistent with Federal, State, and local law, make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse.

(c) The agency shall either conduct criminal background checks of current employees at least every five years or have in place a system for otherwise capturing such information for current employees.

(d) The agency shall ask all applicants and employees directly about previous misconduct in written applications for hiring or promotions, in interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees.

(e) Material omissions, or the provision of materially false information, shall be grounds for termination.

(f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**§ 115.117 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new lockup and in planning any substantial expansion or modification of existing lockups, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect detainees from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect detainees from sexual abuse.

**Responsive Planning**

**§ 115.121 Evidence protocol and forensic medical exams.**

(a) To the extent the agency is responsible for investigating allegations of sexual abuse in its lockups, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be adapted from or otherwise based on the 2004 U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2010. As part of the training required in § 115.131, employees and volunteers who may have contact with lockup detainees shall receive basic training regarding how to detect and respond to victims of sexual abuse.

(c) The agency shall offer all victims of sexual abuse access to forensic medical exams performed by qualified medical practitioners, whether onsite or at an outside facility, without financial cost, where evidentiarily or medically appropriate.

(d) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of these policies.

(e) The requirements in paragraphs (a) through (d) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in lockups; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in institutional settings.

**§ 115.123 Policies to ensure investigation of allegations.**

(a) If another law enforcement agency is responsible for conducting investigations of allegations of sexual abuse or sexual harassment in its lockups, the agency shall have in place a policy to ensure that such allegations are investigated by an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior, and shall publish such policy on its Web site, including a description of responsibilities of both the agency and the investigating entity.

(b) Any State entity responsible for conducting criminal or administrative investigations of sexual abuse in lockups shall have in place a policy governing the conduct of such investigations.

(c) Any Department of Justice component responsible for conducting criminal or administrative investigations of sexual abuse in lockups shall have in place a policy governing the conduct of such investigations.

**Training and Education**

**§ 115.131 Employee and volunteer training.**

(a) The agency shall train all employees and volunteers who may have contact with lockup detainees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures, and to communicate effectively and professionally with all detainees.

(b) All current employees and volunteers who may have contact with lockup detainees shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all such employees and volunteers to ensure that they know the agency's current sexual abuse policies and procedures.

(c) The agency shall document, via employee signature or electronic verification, that employees understand the training they have received.

**§ 115.132 Detainee, attorney, contractor, and inmate worker notification of the agency's zero-tolerance policy.**

(a) During the intake process, employees shall notify all detainees of the agency's zero-tolerance policy regarding sexual abuse.

(b) The agency shall ensure that, upon entering the lockup, attorneys, contractors, and any inmates who work in the lockup are informed of the agency's zero-tolerance policy regarding sexual abuse.

**§ 115.134 Specialized training: Investigations.**

(a) In addition to the general training provided to all employees and volunteers pursuant to § 115.131, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in lockups shall provide such training to their agents and investigators who conduct such investigations.

**Reporting**

**§ 115.151 Detainee reporting.**

(a) The agency shall provide multiple ways for detainees to privately report sexual abuse and sexual harassment, retaliation by other detainees or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse.

(b) The agency shall also make its best efforts to provide at least one way for detainees to report abuse or harassment to an outside governmental entity that is not affiliated with the agency or that is operationally independent from agency leadership, such as an inspector general or ombudsperson.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of detainees.

**§ 115.154 Third-party reporting.**

The agency shall establish a method to receive third-party reports of sexual abuse in its lockups. The agency shall distribute publicly information on how to report sexual abuse on behalf of a detainee.

**Official Response Following a Detainee Report**

**§ 115.161 Staff and agency reporting duties.**

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in an agency lockup; retaliation against detainees or staff who reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment and investigation decisions.

(c) If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(d) The agency shall report all allegations of sexual abuse, including third-party and anonymous reports, to the agency's designated investigators.

**§ 115.162 Reporting to other confinement facilities.**

(a) Within 14 days of receiving an allegation that a detainee was sexually abused while confined at another facility or lockup, the head of the facility or lockup that received the allegation shall notify in writing the head of the facility or lockup or appropriate central office of the agency where the alleged abuse occurred.

(b) The facility or lockup head or central office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

**§ 115.163 Staff first responder duties.**

(a) Upon learning that a detainee was sexually abused within a time period that still allows for the collection of physical evidence, the first law enforcement staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Seal and preserve any crime scene; and

(3) Request the victim not to take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a law enforcement staff member, he or she shall be required to request the victim not to take any actions that could destroy physical evidence and then notify law enforcement staff.

**§ 115.164 Coordinated response.**

(a) The agency shall coordinate actions taken in response to a lockup incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and agency leadership.

(b) If a victim is transferred from the lockup to a jail, prison, or medical facility, the agency shall, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

**§ 115.165 Agency protection against retaliation.**

(a) The agency shall protect all detainees and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other detainees or staff.

(b) The agency shall employ multiple protection measures, including housing changes or transfers for detainee victims or abusers, removal of alleged staff or detainee abusers from contact with victims, and emotional support services for staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) The agency shall monitor the conduct and treatment of detainees or staff who have reported sexual abuse or cooperated with investigations, and shall act promptly to remedy any such retaliation.

(d) The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with victims pending an investigation.

**Investigations**

**§ 115.171 Criminal and administrative agency investigations.**

(a) When the agency conducts its own investigations into allegations of sexual abuse, it shall do so promptly, thoroughly, and objectively, using investigators who have received special training in sexual abuse investigations pursuant to § 115.134, and shall investigate all allegations of sexual abuse, including third-party and anonymous reports.

(b) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(c) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(d) The credibility of a victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as detainee or staff.

(e) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act facilitated the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative findings.

(f) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(g) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(h) The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(i) The departure of the alleged abuser or victim from the employment or control of the lockup or agency shall not provide a basis for terminating an investigation.

(j) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(k) When outside agencies investigate sexual abuse, the agency shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

**§ 115.172 Evidentiary standard for administrative investigations.**

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

**Discipline**

**§ 115.176 Disciplinary sanctions for staff.**

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching.

(c) Sanctions shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

**§ 115.177 Referrals for prosecution for detainee-on-detainee sexual abuse.**

(a) When there is probable cause to believe that a detainee sexually abused another detainee in a lockup, the agency shall refer the matter to the appropriate prosecuting authority.

(b) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of this policy.

(c) Any State entity or Department of Justice component that is responsible for investigating allegations of sexual abuse in lockups shall be subject to this requirement.

**Medical Care**

**§ 115.182 Access to emergency medical services.**

(a) Detainee victims of sexual abuse in lockups shall receive timely, unimpeded access to emergency medical treatment.

(b) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser.

**Data Collection and Review**

**§ 115.186 Sexual abuse incident reviews.**

(a) The lockup shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) The review team shall include upper management officials, with input from line supervisors and investigators.

(c) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated or otherwise caused by the perpetrator or victim's race, ethnicity, sexual orientation, gang affiliation, or other group dynamics at the lockup;

(3) Examine the area in the lockup where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings and any recommendations for improvement and submit such report to the lockup head and agency PREA coordinator.

**§ 115.187 Data collection.**

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at lockups under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Local Jail Jurisdictions Survey of Sexual Violence conducted by the Department of Justice's Bureau of Justice Statistics, or any subsequent form developed by the Bureau of Justice Statistics and designated for lockups.

(d) The agency shall collect data from multiple sources, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from any private agency with which it contracts for the confinement of its detainees.

(f) Upon request, the agency shall provide all such data from the previous year to the Department of Justice no later than June 30.

**§ 115.188 Data review for corrective action.**

(a) The agency shall review data collected and aggregated pursuant to section 115.187 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each lockup, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a lockup, but must indicate the nature of the material redacted.

**§ 115.189 Data storage, publication, and destruction.**

(a) The agency shall ensure that data collected pursuant to § 115.187 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from lockups under its direct control and any private agencies with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

**Audits**

**§ 115.193 Audits of standards.**

(a) An audit shall be considered independent if it is conducted by:

(1) A correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government;

(2) An auditing entity that is within the agency but separate from its normal chain of command, such as an inspector general or ombudsperson who reports

directly to the agency head or to the agency's governing board; or

(3) Other outside individuals with relevant experience.

(b) No audit may be conducted by an auditor who has received financial compensation from the agency being audited within the three years prior to the agency's retention of the auditor.

(c) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent audits.

(d) All auditors shall be certified by the Department of Justice to conduct such audits, and shall be re-certified every three years.

(e) The Department of Justice shall prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and detainees. The Department of Justice also shall prescribe the minimum qualifications for auditors.

(f) The agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and detainees to conduct a comprehensive audit.

(g) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one or is otherwise made readily available to the public.

## Subpart C—Standards for Community Confinement Facilities

### Prevention Planning

#### § 115.211 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level agency-wide PREA coordinator, who may be full-time or part-time, to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its community confinement facilities.

#### § 115.212 Contracting with other entities for the confinement of residents.

(a) A public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contracts or contract renewals shall provide for agency contract monitoring to ensure that the contractor is complying with PREA standards.

(c) Only in emergency circumstances in which all reasonable attempts to find a private agency or other entity in compliance with the PREA standards have failed, may the agency enter into a contract with an entity that fails to comply with these standards. In such a case, the public agency shall document its unsuccessful attempts to find an entity in compliance with the standards.

#### § 115.213 Supervision and monitoring.

(a) For each facility, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating such levels, agencies shall take into consideration the physical layout of each facility, the composition of the resident population, and any other relevant factors.

(b) The facility shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in paragraph (a) of this section are not attained.

(c) Each year, the facility shall assess, and determine whether adjustments are needed to:

(1) The staffing levels established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns; and

(3) The agency's deployment of video monitoring systems and other technologies.

#### § 115.214 Limits to cross-gender viewing and searches.

(a) The facility shall not conduct cross-gender strip searches or visual body cavity searches except in case of emergency or when performed by medical practitioners.

(b) The facility shall document all such cross-gender searches.

(c) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine cell checks.

(d) The facility shall not examine a transgender resident to determine the resident's genital status unless the resident's genital status is unknown. Such examination shall be conducted in private by a medical practitioner.

(e) Following classification, the agency shall implement procedures to exempt from non-emergency cross-gender pat-down searches those residents who have suffered documented prior cross-gender sexual abuse while incarcerated.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender residents, in a professional and respectful manner, and in the least intrusive manner.

#### § 115.215 Accommodating residents with special needs.

(a) The agency shall ensure that residents who are limited English proficient, deaf, or disabled are able to report sexual abuse and sexual harassment to staff directly or through other established reporting mechanisms, such as abuse hotlines, without relying on resident interpreters, absent exigent circumstances.

(b) The agency shall make accommodations to convey verbally all written information about sexual abuse policies, including how to report sexual abuse and sexual harassment, to residents who have limited reading skills or who are visually impaired.

#### § 115.216 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who has engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) Before hiring new employees, the agency shall:

(1) Perform a criminal background check; and

(2) Consistent with Federal, State, and local law, make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse.

(c) The agency shall either conduct criminal background checks of current employees at least every five years or have in place a system for otherwise capturing such information for current employees.

(d) The agency shall also ask all applicants and employees directly about previous misconduct in written applications for hiring or promotions, in interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees.

(e) Material omissions, or the provision of materially false information, shall be grounds for termination.

(f) Unless prohibited by law, the agency shall provide information on

substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**§ 115.217 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect residents from sexual abuse.

**Responsive Planning**

**§ 115.221 Evidence protocol and forensic medical exams.**

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be adapted from or otherwise based on the 2004 U.S. Department of Justice's Office on Violence Against Women publication "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2010.

(c) The agency shall offer all victims of sexual abuse access to forensic medical exams performed by qualified medical practitioners, whether onsite or at an outside facility, without financial cost, where evidentiarily or medically appropriate.

(d) The agency shall make available to the victim a qualified staff member or a victim advocate from a community-based organization that provides services to sexual abuse victims.

(e) As requested by the victim, the qualified staff member or victim advocate shall accompany and support the victim through the forensic medical exam process and the investigatory process and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of these policies.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in institutional settings; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in institutional settings.

(h) For the purposes of this standard, a qualified staff member shall be an individual who is employed by a facility and has received education concerning sexual assault and forensic examination issues in general.

**§ 115.222 Agreements with outside public entities and community service providers.**

(a) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with an outside public entity or office that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials pursuant to § 115.251, unless the agency enables residents to make such reports to an internal entity that is operationally independent from the agency's chain of command, such as an inspector general or ombudsperson who reports directly to the agency head.

(b) The agency also shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse.

(c) The agency shall maintain copies of agreements or documentation showing attempts to enter into agreements.

**§ 115.223 Policies to ensure investigation of allegations.**

(a) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior, and shall publish such policy on its Web site.

(b) If a separate entity is responsible for conducting criminal investigations, such Web site publication shall describe the responsibilities of both the agency and the investigating entity.

(c) Any State entity responsible for conducting criminal or administrative investigations of sexual abuse in institutional settings shall have in place a policy governing the conduct of such investigations.

(d) Any Department of Justice component responsible for conducting criminal or administrative investigations of sexual abuse in institutional settings shall have in place a policy governing the conduct of such investigations.

**Training and Education**

**§ 115.231 Employee training.**

(a) The agency shall train all employees who may have contact with residents on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse prevention, detection, reporting, and response policies and procedures;

(3) Residents' right to be free from sexual abuse and sexual harassment;

(4) The right of residents and employees to be free from retaliation for reporting sexual abuse;

(5) The dynamics of sexual abuse in confinement;

(6) The common reactions of sexual abuse victims;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with residents; and

(9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, or intersex residents.

(b) Such training shall be tailored to the gender of the residents at the employee's facility.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all employees to ensure that they know the agency's current sexual abuse policies and procedures.

(d) The agency shall document, via employee signature or electronic verification, that employees understand the training they have received.

**§ 115.232 Volunteer and contractor training.**

(a) The agency shall ensure that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with residents, but all volunteers and contractors who have contact with residents shall be notified of the agency's zero-tolerance policy regarding

sexual abuse and sexual harassment and informed how to report sexual abuse.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

**§ 115.233 Resident education.**

(a) During the intake process, staff shall inform residents of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment, how to report incidents or suspicions of sexual abuse or sexual harassment, their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such abuse or harassment, and regarding agency sexual abuse response policies and procedures.

(b) The agency shall provide refresher information whenever a resident is transferred to a different facility.

(c) The agency shall provide resident education in formats accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as residents who have limited reading skills.

(d) The agency shall maintain documentation of resident participation in these education sessions.

(e) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

**§ 115.234 Specialized training: Investigations.**

(a) In addition to the general training provided to all employees pursuant to § 115.231, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

**§ 115.235 Specialized training: Medical and mental health care.**

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to victims of sexual abuse; and

(4) How and to whom to report allegations or suspicions of sexual abuse.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

**Screening for Risk of Sexual Victimization and Abusiveness**

**§ 115.241 Screening for risk of victimization and abusiveness.**

(a) All residents shall be screened during the intake process or during an initial classification process to assess their risk of being sexually abused by other residents or sexually abusive toward other residents.

(b) Such screening shall be conducted using an objective screening instrument, blank copies of which shall be made available to the public upon request.

(c) The initial classification process shall consider, at a minimum, the following criteria to screen residents for risk of sexual victimization:

(1) Whether the resident has a mental, physical, or developmental disability;

(2) The age of the resident, including whether the resident is a juvenile;

(3) The physical build of the resident;

(4) Whether the resident has previously been incarcerated;

(5) Whether the resident's criminal history is exclusively nonviolent;

(6) Whether the resident has prior convictions for sex offenses against an adult or child;

(7) Whether the resident is gay, lesbian, bisexual, transgender, or intersex;

(8) Whether the resident has previously experienced sexual victimization; and

(9) The resident's own perception of vulnerability.

(d) The initial classification process shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in screening residents for risk of being sexually abusive.

(e) An agency shall conduct such initial classification within 30 days of the resident's confinement.

(f) Residents shall be rescreened when warranted due to a referral, request, or incident of sexual victimization. Residents may not be disciplined for refusing to answer particular questions or for not disclosing complete information.

(g) The agency shall implement appropriate controls on the dissemination of responses to screening questions within the facility in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

**§ 115.242 Use of screening information.**

(a) The agency shall use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each resident.

(c) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.

(d) Such resident's own views with respect to his or her own safety shall be given serious consideration.

**Reporting**

**§ 115.251 Resident reporting.**

(a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse.

(b) Pursuant to § 115.222, the agency shall also make its best efforts to provide at least one way for residents to report abuse or harassment to an outside governmental entity that is not affiliated with the agency or that is operationally independent from agency leadership, such as an inspector general or

ombudsperson, and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

**§ 115.252 Exhaustion of administrative remedies.**

(a)(1) The agency shall provide a resident a minimum of 20 days following the occurrence of an alleged incident of sexual abuse to file a grievance regarding such incident.

(2) The agency shall grant an extension of no less than 90 days from the deadline for filing such a grievance when the resident provides documentation, such as from a medical or mental health provider or counselor, that filing a grievance within the normal time limit was or would likely be impractical, whether due to physical or psychological trauma arising out of an incident of sexual abuse, the resident having been held for periods of time outside of the facility, or other circumstances indicating impracticality. Such an extension shall be afforded retroactively to a resident whose grievance is filed subsequent to the normal filing deadline.

(b)(1) The agency shall issue a final agency decision on the merits of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by residents in appealing any adverse ruling.

(3) An agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision.

(4) The agency shall notify the resident in writing of any such extension and provide a date by which a decision will be made.

(c)(1)Whenever an agency is notified of an allegation that a resident has been sexually abused, other than by notification from another resident, it shall consider such notification as a grievance or request for informal resolution submitted on behalf of the alleged resident victim for purposes of initiating the agency administrative remedy process.

(2) The agency shall inform the alleged victim that a grievance or request for informal resolution has been submitted on his or her behalf and shall process it under the agency's normal procedures unless the alleged victim expressly requests that it not be processed. The agency shall document any such request.

(3) The agency may require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(4) The agency shall also establish procedures to allow the parent or legal guardian of a juvenile to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile.

(d)(1) An agency shall establish procedures for the filing of an emergency grievance where a resident is subject to a substantial risk of imminent sexual abuse.

(2) After receiving such an emergency grievance, the agency shall immediately forward it to a level of review at which corrective action may be taken, provide an initial response within 48 hours, and a final agency decision within five calendar days.

(3) The agency may opt not to take such actions if it determines that no emergency exists, in which case it may either:

(i) Process the grievance as a normal grievance; or

(ii) Return the grievance to the resident, and require the resident to follow the agency's normal grievance procedures.

(4) The agency shall provide a written explanation of why the grievance does not qualify as an emergency.

(5) An agency may discipline a resident for intentionally filing an emergency grievance where no emergency exists.

**§ 115.253 Resident access to outside confidential support services.**

(a) The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse by giving residents mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and by enabling reasonable communication between residents and these organizations, as confidential as possible, consistent with agency security needs.

(b) The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored.

**§ 115.254 Third-party reporting.**

The facility shall establish a method to receive third-party reports of sexual abuse. The facility shall distribute publicly information on how to report sexual abuse on behalf of a resident.

**Official Response Following a Resident Report**

**§ 115.261 Staff and agency reporting duties.**

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against residents or staff who reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform residents of the practitioner's duty to report at the initiation of services.

(d) If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse, including third-party and anonymous reports, to the facility's designated investigators.

**§ 115.262 Reporting to other confinement facilities.**

(a) Within 14 days of receiving an allegation that a resident was sexually abused while confined at another community corrections facility, the head of the facility that received the allegation shall notify in writing the head of the facility or appropriate central office of the agency where the alleged abuse occurred.

(b) The facility head or central office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

**§ 115.263 Staff first responder duties.**

(a) Upon learning that a resident was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Seal and preserve any crime scene; and

(3) Request the victim not to take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, he or she shall be required to request the victim not to take any actions that could destroy physical evidence and then notify security staff.

**§ 115.264 Coordinated response.**

The facility shall coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

**§ 115.265 Agency protection against retaliation.**

(a) The agency shall protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff.

(b) The agency shall employ multiple protection measures, including housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) The agency shall monitor the conduct and treatment of residents or staff who have reported sexual abuse or cooperated with investigations, including any resident disciplinary reports, housing, or program changes, for at least 90 days following their report or cooperation to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with victims pending an investigation.

**Investigations**

**§ 115.271 Criminal and administrative agency investigations.**

(a) When the agency conducts its own investigations into allegations of sexual abuse, it shall do so promptly, thoroughly, and objectively, using investigators who have received special training in sexual abuse investigations pursuant to § 115.234, and shall investigate all allegations of sexual abuse, including third-party and anonymous reports.

(b) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(c) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(d) The credibility of a victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff.

(e) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act facilitated the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative findings.

(f) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(g) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(h) The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(i) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(j) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(k) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

**§ 115.272 Evidentiary standard for administrative investigations.**

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

**§ 115.273 Reporting to residents.**

(a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

(c) Following a resident's allegation that a staff member has committed sexual abuse, the agency shall subsequently inform the resident whenever:

(1) The staff member is no longer posted within the resident's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) The requirement to inform the inmate shall not apply to allegations that have been determined to be unfounded.

**Discipline**

**§ 115.276 Disciplinary sanctions for staff.**

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching.

(c) Sanctions shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

**§ 115.277 Disciplinary sanctions for residents.**

(a) Residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.

(c) The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) Any prohibition on resident-on-resident sexual activity shall not consider consensual sexual activity to constitute sexual abuse.

**Medical and Mental Care**

**§ 115.282 Access to emergency medical and mental health services.**

(a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser.

(c) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.263 and shall immediately notify the appropriate medical and mental health practitioners.

(d) Resident victims of sexual abuse while incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate.

**§ 115.283 Ongoing medical and mental health care for sexual abuse victims and abusers.**

(a) The facility shall offer ongoing medical and mental health evaluation and treatment to all residents who, during their present term of incarceration, have been victimized by sexual abuse.

(b) The evaluation and treatment of sexual abuse victims shall include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide resident victims of sexual abuse with medical and mental health services consistent with the community level of care.

(d) All prisons shall conduct a mental health evaluation of all known resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health practitioners.

(e) Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(f) If pregnancy results, such victims shall receive timely information about and access to all pregnancy-related medical services that are lawful in the community.

**Data Collection and Review**

**§ 115.286 Sexual abuse incident reviews.**

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) The review team shall include upper management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(c) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated or otherwise caused by the perpetrator or victim's race, ethnicity, sexual orientation, gang affiliation, or other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings and any recommendations for improvement and submit such report to the facility head and PREA coordinator, if any.

**§ 115.287 Data collection.**

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice's Bureau of Justice Statistics.

(d) The agency shall collect data from multiple sources, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents.

(f) Upon request, the agency shall provide all such data from the previous year to the Department of Justice no later than June 30.

**§ 115.288 Data review for corrective action.**

(a) The agency shall review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

**§ 115.289 Data storage, publication, and destruction.**

(a) The agency shall ensure that data collected pursuant to § 115.287 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

**Audits**

**§ 115.293 Audits of standards.**

(a) An audit shall be considered independent if it is conducted by:

(1) A correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government;

(2) An auditing entity that is within the agency but separate from its normal chain of command, such as an inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board; or

(3) Other outside individuals with relevant experience.

(b) No audit may be conducted by an auditor who has received financial compensation from the agency being audited within the three years prior to the agency's retention of the auditor.

(c) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent audits.

(d) All auditors shall be certified by the Department of Justice to conduct such audits, and shall be re-certified every three years.

(e) The Department of Justice shall prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and residents. The Department of Justice also shall prescribe the minimum qualifications for auditors.

(f) The agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and residents to conduct a comprehensive audit.

(g) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one or is otherwise made readily available to the public.

## Subpart D—Standards for Juvenile Facilities

**Prevention Planning**

**§ 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.**

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level agency-wide PREA coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) The PREA coordinator shall be a full-time position in all agencies that operate facilities whose total rated capacity exceeds 1000 residents, but may be designated as a part-time position in agencies whose total rated capacity does not exceed 1000 residents.

(d) An agency whose facilities have a total rated capacity exceeding 1000 residents shall also designate a PREA coordinator for each facility, who may be full-time or part-time.

**§ 115.312 Contracting with other entities for the confinement of residents.**

(a) A public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contracts or contract renewals the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contracts or contract renewals shall provide for agency contract monitoring to ensure that the contractor is complying with PREA standards.

**§ 115.313 Supervision and monitoring.**

(a) For each facility, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating such levels, agencies shall take into consideration the physical layout of each facility, the composition of the resident population, and any other relevant factors.

(b) The facility shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in paragraph (a) of this section are not attained.

(c) Each year, the facility shall assess, and determine whether adjustments are needed to:

(1) The staffing levels established pursuant to paragraph (a) of this section;

(2) Prevailing staffing patterns; and

(3) The agency's deployment of video monitoring systems and other technologies.

(d) Each secure facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts.

**§ 115.314 Limits to cross-gender viewing and searches.**

(a) The facility shall not conduct cross-gender strip searches or visual body cavity searches except in case of emergency or when performed by medical practitioners.

(b) The facility shall document all such cross-gender searches.

(c) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine cell checks.

(d) The facility shall not examine a transgender resident to determine the resident's genital status unless the resident's genital status is unknown. Such examination shall be conducted in private by a medical practitioner.

(e) The agency shall not conduct cross-gender pat-down searches except in the case of emergency or other unforeseen circumstances. Any such search shall be documented and justified.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

**§ 115.315 Accommodating residents with special needs.**

(a) The agency shall ensure that residents who are limited English proficient, deaf, or disabled are able to report sexual abuse and sexual harassment to staff directly or through other established reporting mechanisms, such as abuse hotlines, without relying on resident interpreters, absent exigent circumstances.

(b) The agency shall make accommodations to convey verbally all written information about sexual abuse policies, including how to report sexual abuse and sexual harassment, to residents who have limited reading skills or who are visually impaired.

**§ 115.316 Hiring and promotion decisions.**

(a) The agency shall not hire or promote anyone who has engaged in sexual abuse in an institutional setting; who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion; or who has been civilly or administratively adjudicated to have engaged in such activity.

(b) Before hiring new employees, the agency shall:

(1) Perform a criminal background check; and

(2) Consistent with Federal, State, and local law, make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse.

(c) The agency shall either conduct criminal background checks of current employees at least every five years or have in place a system for otherwise capturing such information for current employees.

(d) The agency shall also ask all applicants and employees directly about previous misconduct in written applications for hiring or promotions, in interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees.

(e) Material omissions, or the provision of materially false information, shall be grounds for termination.

(f) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**§ 115.317 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect residents from sexual abuse.

**Responsive Planning**

**§ 115.321 Evidence protocol and forensic medical exams.**

(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(b) The protocol shall be adapted from or otherwise based on the 2004 U.S. Department of Justice's Office on Violence Against Women publication "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2010.

(c) The agency shall offer all residents who experience sexual abuse access to forensic medical exams performed by qualified medical practitioners, whether onsite or at an outside facility, without financial cost, where evidentiarily or medically appropriate.

(d) The agency shall make available to the victim a qualified staff member or a victim advocate from a community-based organization that provides services to sexual abuse victims.

(e) As requested by the victim, the qualified staff member or victim advocate shall accompany and support the victim through the forensic medical exam process and the investigatory process and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of these policies.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in institutional settings; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in institutional settings.

(h) For the purposes of this standard, a qualified staff member shall be an individual who is employed by a facility and has received education concerning sexual assault and forensic examination issues in general.

**§ 115.322 Agreements with outside public entities and community service providers.**

(a) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with an outside public entity or office that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials pursuant to § 115.351, unless the agency enables residents to make such reports to an internal entity that is operationally independent from the agency's chain of command, such as an inspector general or ombudsperson who reports directly to the agency head.

(b) The agency also shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with emotional support services related to sexual abuse, including helping resident sexual abuse victims during community re-entry, unless the agency is legally required to provide such services to all residents.

(c) The agency shall maintain copies of agreements or documentation showing attempts to enter into agreements.

**§ 115.323 Policies to ensure investigation of allegations.**

(a) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are investigated by an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior, and shall publish such policy on its Web site.

(b) If a separate entity is responsible for conducting criminal investigations, such Web site publication shall describe the responsibilities of both the agency and the investigating entity.

(c) Any State entity responsible for conducting criminal or administrative investigations of sexual abuse in juvenile facilities shall have in place a policy governing the conduct of such investigations.

(d) Any Department of Justice component responsible for conducting criminal or administrative investigations of sexual abuse in juvenile facilities shall have in place a policy governing the conduct of such investigations.

**Training and Education**

**§ 115.331 Employee training.**

(a) The agency shall train all employees who may have contact with residents on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse prevention, detection, reporting, and response policies and procedures;

(3) Residents' right to be free from sexual abuse and sexual harassment;

(4) The right of residents and employees to be free from retaliation for reporting sexual abuse;

(5) The dynamics of sexual abuse in juvenile facilities;

(6) The common reactions of juvenile victims of sexual abuse;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with residents;

(9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, or intersex residents; and

(10) Relevant laws related to mandatory reporting.

(b) Such training shall be tailored to the unique needs and attributes of residents of juvenile facilities.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all employees to ensure that they know the agency's current sexual abuse policies and procedures.

(d) The agency shall document, via employee signature or electronic verification, that employees understand the training they have received.

**§ 115.332 Volunteer and contractor training.**

(a) The agency shall ensure that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with residents, but all volunteers and contractors who have contact with residents shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report sexual abuse.

(c) The agency shall maintain documentation confirming that volunteer*s* and contractor*s* understand the training they have received.

**§ 115.333 Resident education.**

(a) During the intake process, staff shall inform residents in an age-appropriate fashion of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive age-appropriate education to residents either in person or via video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such abuse or harassment, and regarding agency sexual abuse response policies and procedures.

(c) Current residents who have not received such education shall be educated within one year of the effective date of the PREA standards, and the agency shall provide refresher information to all residents at least annually and whenever a resident is transferred to a different facility, to ensure that they know the agency's current sexual abuse policies and procedures.

(d) The agency shall provide resident education in formats accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to residents who have limited reading skills.

(e) The agency shall maintain documentation of resident participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

**§ 115.334 Specialized training: Investigations.**

(a) In addition to the general training provided to all employees pursuant to § 115.331, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing juvenile sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in juvenile confinement settings shall provide such training to its agents and investigators who conduct such investigations.

**§ 115.335 Specialized training: Medical and mental health care.**

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

(1) How to detect and assess signs of sexual abuse;

(2) How to preserve physical evidence of sexual abuse;

(3) How to respond effectively and professionally to juvenile victims of sexual abuse; and

(4) How and to whom to report allegations or suspicions of sexual abuse.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

**Assessment and Placement of Residents**

**§ 115.341 Obtaining information from residents.**

(a) During the intake process and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.

(b) Such assessment shall be conducted using an objective screening instrument, blank copies of which shall be made available to the public upon request.

(c) At a minimum, the agency shall attempt to ascertain information about:

(1) Prior sexual victimization or abusiveness;

(2) Sexual orientation, transgender, or intersex status;

(3) Current charges and offense history;

(4) Age;

(5) Level of emotional and cognitive development;

(6) Physical size and stature;

(7) Mental illness or mental disabilities;

(8) Intellectual or developmental disabilities;

(9) Physical disabilities;

(10) The resident's own perception of vulnerability; and

(11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.

(d) This information shall be ascertained through conversations with residents during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the residents' files.

(e) The agency shall implement appropriate controls on the dissemination of responses to screening questions within the facility in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

**§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.**

(a) The agency shall use all information obtained about the resident during the intake process and subsequently to make placement decisions for each resident based upon the objective screening instrument with the goal of keeping all residents safe and free from sexual abuse.

(b) When determining housing, bed, program, education and work assignments for residents, the agency must take into account:

(1) A resident's age;

(2) The nature of his or her offense;

(3) Any mental or physical disability or mental illness;

(4) Any history of sexual victimization or engaging in sexual abuse;

(5) His or her level of emotional and cognitive development;

(6) His or her identification as lesbian, gay, bisexual, transgender, or intersex; and

(7) Any other information obtained about the resident pursuant to § 115.341.

(c) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged.

(d) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status.

(e) The agency shall make an individualized determination about whether a transgender resident should be housed with males or with females.

**Reporting**

**§ 115.351 Resident reporting.**

(a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse.

(b) Pursuant to § 115.322, the agency shall also make its best efforts to provide at least one way for residents to report abuse or harassment to an outside governmental entity that is not affiliated with the agency or that is operationally independent from agency leadership, such as an inspector general or ombudsperson, and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The facility shall provide residents with access to tools necessary to make a written report.

(e) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

**§ 115.352 Exhaustion of administrative remedies.**

(a)(1) The agency shall provide a resident a minimum of 20 days following the occurrence of an alleged incident of sexual abuse to file a grievance regarding such incident.

(2) The agency shall grant an extension of no less than 90 days from the deadline for filing such a grievance when the resident provides documentation, such as from a medical or mental health provider or counselor, that filing a grievance within the normal time limit was or would likely be impractical, whether due to physical or psychological trauma arising out of an incident of sexual abuse, the resident having been held for periods of time outside of the facility, or other circumstances indicating impracticality. Such an extension shall be afforded retroactively to a resident whose grievance is filed subsequent to the normal filing deadline.

(b)(1) The agency shall issue a final agency decision on the merits of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by residents in appealing any adverse ruling.

(3) An agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision.

(4) The agency shall notify the resident in writing of any such extension and provide a date by which a decision will be made.

(c)(1)Whenever an agency is notified of an allegation that a resident has been sexually abused, other than by notification from another resident, it shall consider such notification as a grievance or request for informal resolution submitted on behalf of the alleged resident victim for purposes of initiating the agency administrative remedy process.

(2) The agency shall inform the alleged victim that a grievance or request for informal resolution has been submitted on his or her behalf and shall process it under the agency's normal procedures unless the alleged victim expressly requests that it not be processed. The agency shall document any such request.

(3) The agency may require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(4) The agency shall also establish procedures to allow the parent or legal guardian of a juvenile to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile.

(d)(1) An agency shall establish procedures for the filing of an emergency grievance where a resident is subject to a substantial risk of imminent sexual abuse.

(2) After receiving such an emergency grievance, the agency shall immediately forward it to a level of review at which corrective action may be taken, provide an initial response within 48 hours, and a final agency decision within five calendar days.

(3) The agency may opt not to take such actions if it determines that no emergency exists, in which case it may either:

(i) Process the grievance as a normal grievance; or

(ii) Return the grievance to the resident, and require the resident to follow the agency's normal grievance procedures.

(4) The agency shall provide a written explanation of why the grievance does not qualify as an emergency.

(5) An agency may discipline a resident for intentionally filing an emergency grievance where no emergency exists.

**§ 115.353 Resident access to outside support services and legal representation.**

(a) In addition to providing onsite mental health care services, the facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and by enabling reasonable communication between residents and these organizations, as confidential as possible, consistent with agency security needs and with applicable law.

(b) The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored.

(c) The facility shall also provide residents with reasonable and confidential access to their attorney or other legal representation and reasonable access to parents or legal guardians.

**§ 115.354 Third-party reporting.**

The facility shall establish a method to receive third-party reports of sexual abuse. The facility shall distribute publicly, including to residents' attorneys and parents or legal guardians, information on how to report sexual abuse on behalf of a resident.

**Official Response Following a Resident Report**

**§ 115.361 Staff and agency reporting duties.**

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information they receive regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against residents or staff who reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation.

(b) The agency shall also require all staff to comply with any applicable mandatory child abuse reporting laws.

(c) Apart from reporting to designated supervisors or officials and designated State or local services agencies, staff shall be prohibited from revealing any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(d)(1) Medical and mental health practitioners shall be required to report sexual abuse to designated supervisors and officials pursuant to paragraph (a) of this section, as well as to the designated State or local services agency where required by mandatory reporting laws.

(2) Such practitioners shall be required to inform residents at the initiation of services of their duty to report.

(e)(1) Upon receiving any allegation of sexual abuse, the facility head or his or her designee shall promptly report the allegation to the appropriate central office of the agency and the victim's parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified.

(2) If the victim is under the guardianship of the child welfare system, the report shall be made to the victim's caseworker instead of the victim's parents or legal guardians.

(3) If a juvenile court retains jurisdiction over a juvenile, the facility head or designee shall also report the allegation to such court within 14 days of receiving the allegation, unless additional time is needed to comply with applicable rules governing ex parte communications.

(f) The facility shall report all allegations of sexual abuse, including third-party and anonymous reports, to the facility's designated investigators.

**§ 115.362 Reporting to other confinement facilities.**

(a) Within 14 days of receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify in writing the head of the facility or appropriate central office of the agency where the alleged abuse occurred and shall also notify the appropriate investigative agency.

(b) The facility head or central office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

**§ 115.363 Staff first responder duties.**

Upon learning that a resident was sexually abused within a time period that still allows for the collection of physical evidence, the first staff member to respond to the report shall be required to:

(a) Separate the alleged victim and abuser;

(b) Seal and preserve any crime scene; and

(c) Request the victim not to take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

**§ 115.364 Coordinated response.**

The facility shall coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

**§ 115.365 Agency protection against retaliation.**

(a) The agency shall protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff.

(b) The agency shall employ multiple protection measures, including housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) The agency shall monitor the conduct or treatment of residents or staff who have reported sexual abuse or cooperated with investigations, including any resident disciplinary reports, housing, or program changes, for at least 90 days following their report or cooperation, to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with residents pending an investigation.

**§ 115.366 Post-allegation protective custody.**

Any use of segregated housing to protect a resident who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.342.

**Investigations**

**§ 115.371 Criminal and administrative agency investigations.**

(a) When the agency conducts its own investigations into allegations of sexual abuse, it shall do so promptly, thoroughly, and objectively, using investigators who have received special training in sexual abuse investigations involving juvenile victims pursuant to § 115.334, and shall investigate all allegations of sexual abuse, including third-party and anonymous reports.

(b) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(c) The agency shall not terminate an investigation solely because the source of the allegation recants the allegation.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of a victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff.

(f) Administrative investigations:

(1) Shall include an effort to determine whether staff actions or failures to act facilitated the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(*l*) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

**§ 115.372 Evidentiary standard for administrative investigations.**

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.

**§ 115.373 Reporting to residents.**

(a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

(c) Following a resident's allegation that a staff member has committed sexual abuse, the agency shall subsequently inform the resident whenever:

(1) The staff member is no longer posted within the resident's unit;

(2) The staff member is no longer employed at the facility;

(3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) The requirement to inform the inmate shall not apply to allegations that have been determined to be unfounded.

**Discipline**

**§ 115.376 Disciplinary sanctions for staff.**

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching.

(c) Sanctions shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

**§ 115.377 Disciplinary sanctions for residents.**

(a) Residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.

(c) The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) Any prohibition on resident-on-resident sexual activity shall not consider consensual sexual activity to constitute sexual abuse.

**Medical and Mental Care**

**§ 115.381 Medical and mental health screenings; history of sexual abuse.**

(a) All facilities shall ask residents about prior sexual victimization during the intake process or classification screenings.

(b) If a resident discloses prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up reception with a medical or mental health practitioner within 14 days of the intake screening.

(c) Unless such intake or classification screening precedes adjudication, the facility shall also ask residents about prior sexual abusiveness.

(d) If a resident discloses prior sexual abusiveness, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up reception with a mental health practitioner within 14 days of the intake screening.

(e) Subject to mandatory reporting laws, any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments.

(f) Medical and mental health practitioners shall obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18.

**§ 115.382 Access to emergency medical and mental health services.**

(a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

(b) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser.

(c) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim pursuant to § 115.363 and shall immediately notify the appropriate medical and mental health practitioners.

(d) Resident victims of sexual abuse while incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate.

**§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers.**

(a) The facility shall offer ongoing medical and mental health evaluation and treatment to all residents who, during their present term of incarceration, have been victimized by sexual abuse.

(b) The evaluation and treatment of sexual abuse victims shall include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide resident victims of sexual abuse with medical and mental health services consistent with the community level of care.

(d) The facility shall conduct a mental health evaluation of all known resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health practitioners.

(e) Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(f) If pregnancy results, such victims shall receive timely information about and access to all pregnancy-related medical services that are lawful in the community.

**Data Collection and Review**

**§ 115.386 Sexual abuse incident reviews.**

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) The review team shall include upper management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(c) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated or otherwise caused by the perpetrator or victim's race, ethnicity, sexual orientation, gang affiliation, or other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings and any recommendations for improvement and submit such report to the facility head and PREA coordinator, if any.

**§ 115.387 Data collection.**

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice's Bureau of Justice Statistics.

(d) The agency shall collect data from multiple sources, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents.

(f) Upon request, the agency shall provide all such data from the previous year to the Department of Justice no later than June 30.

**§ 115.388 Data review for corrective action.**

(a) The agency shall review data collected and aggregated pursuant to § 115.387 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its Web site or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

**§ 115.389 Data storage, publication, and destruction.**

(a) The agency shall ensure that data collected pursuant to § 115.387 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data for at least 10 years after the date of its initial collection unless

Federal, State, or local law requires otherwise.

**Audits**

**§ 115.393 Audits of standards.**

(a) An audit shall be considered independent if it is conducted by:

(1) A correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government;

(2) An auditing entity that is within the agency but separate from its normal chain of command, such as an inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board; or

(3) Other outside individuals with relevant experience.

(b) No audit may be conducted by an auditor who has received financial compensation from the agency being audited within the three years prior to the agency's retention of the auditor.

(c) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent audits.

(d) All auditors shall be certified by the Department of Justice to conduct such audits, and shall be re-certified every three years.

(e) The Department of Justice shall prescribe methods governing the conduct of such audits, including provisions for reasonable inspections of facilities, review of documents, and interviews of staff and residents. The Department of Justice also shall prescribe the minimum qualifications for auditors.

(f) The agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and residents to conduct a comprehensive audit.

(g) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one or is otherwise made readily available to the public.

Dated: January 24, 2011.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2011–1905 Filed 2–2–11; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

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Part IV

## The President

Proclamation 8625—American Heart Month, 2011
Proclamation 8626—National Teen Dating Violence Awareness and Prevention Month, 2011
Executive Order 13564—Establishment of the President's Council on Jobs and Competitiveness

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 8625 of January 31, 2011**

## American Heart Month, 2011

**By the President of the United States of America**

**A Proclamation**

Heart disease is a staggering health problem and a leading cause of death for American women and men. Thankfully, there are steps each of us can take to prevent this chronic disease. In a time when one in three adults in the United States is living with some form of cardiovascular disease, American Heart Month provides an important reminder that it is never too early to take action to improve our heart health.

All Americans should be aware of risk factors that can lead to heart disease, including: high blood pressure, high cholesterol, diabetes, obesity, physical inactivity, tobacco use, and family history. Practicing everyday habits such as eating a balanced diet, maintaining a healthy weight, limiting sodium consumption, exercising regularly, avoiding tobacco, and moderating alcohol intake can reduce these risks. Each of us can be proactive about our well being, and my Administration is committed to helping Americans protect themselves from chronic conditions like heart disease. Under the Affordable Care Act, all new individual and group health plans must now provide recommended preventive care and services without a copayment, coinsurance, or deductible. These potentially life-saving screenings include blood pressure, diabetes, cholesterol, and body mass index tests, as well as counseling on quitting smoking, losing weight, and eating well. To learn more about the risk factors and prevention of heart disease, I encourage all Americans to visit: www.CDC.gov/HeartDisease.

To save lives in the fight against cardiovascular disease, my Administration is investing in world-class research to prevent and treat this and other chronic diseases. We are also continuing to raise awareness of heart disease and its risk factors among Americans of all ages. First Lady Michelle Obama's *Let's Move!* initiative is safeguarding healthier hearts for the next generation by addressing the factors that contribute to childhood obesity and its serious health consequences. The National Heart, Lung, and Blood Institute's *The Heart Truth* campaign sends women of all ages an urgent message about their risk of heart disease. In support of women's heart health, I encourage all Americans to wear red or the campaign's Red Dress Pin on National Wear Red Day on Friday, February 4 in honor of the movement to increase awareness of women's heart disease. Learn more by visiting: www.HeartTruth.gov.

During American Heart Month, we honor the health professionals, researchers, and heart health ambassadors whose dedication enables countless Americans to live full and active lives. This month, let us rededicate ourselves to reducing the burden of heart disease by raising awareness, taking steps to improve our own heart health, and encouraging our colleagues, friends, and family to do the same.

In acknowledgement of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim February 2011 as American Heart Month, and I invite all Americans to participate in National Wear Red Day on February 4, 2011. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and reaffirming our commitment to fighting cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–2575
Filed 2–2–11; 11:15 am]
Billing code 3195–W1–P

# Presidential Documents

**Proclamation 8626 of January 31, 2011**

## National Teen Dating Violence Awareness and Prevention Month, 2011

**By the President of the United States of America**

**A Proclamation**

National Teen Dating Violence Awareness and Prevention Month reflects our Nation's growing understanding that violence within relationships often begins during adolescence. Each year, about one in four teens report being the victim of verbal, physical, emotional, or sexual violence. Abusive relationships can impact adolescent development, and teens who experience dating violence may suffer long-term negative behavioral and health consequences. Adolescents in controlling or violent relationships may carry these dangerous and unhealthy patterns into future relationships. The time to break the cycle of teen dating violence is now, before another generation falls victim to this tragedy.

Though many communities face the problem of teen dating violence, young people can be afraid to discuss it, or they may not recognize the severity of physical, emotional, or sexual abuse. Parents and other adults can also be uncomfortable acknowledging that young people experience abuse, or may be unaware of its occurrence. To help stop abuse before it starts, mentors and leaders must stress the importance of mutual respect and challenge representations in popular culture that can lead young people to accept unhealthy behavior in their relationships.

Our efforts to take on teen dating violence must address the social realities of adolescent life today. Technology such as cell phones, email, and social networking websites play a major role in many teenagers' lives, but these tools are sometimes tragically used for control, stalking, and victimization. Emotional abuse using digital technology, including frequent text messages, threatening emails, and the circulation of embarrassing messages or photographs without consent, can be devastating to young teens. I encourage concerned teens, parents, and loved ones to contact the National Teen Dating Abuse Helpline at 1–866–331–9474 or visit www.LoveIsRespect.org to receive immediate and confidential advice and referrals.

My Administration is committed to engaging a broad spectrum of community partners to curb and prevent teen dating violence. The Department of Justice's Office on Violence Against Women supports collaborative efforts to enhance teens' understanding of healthy relationships, help them identify signs of abuse, and assist them in locating services. Resources are available at: www.OVW.USDOJ.gov/teen__dating__violence.htm. The Centers for Disease Control and Prevention also provide tools to help prevent dating violence among teens. More information is available at: www.CDC.gov/ChooseRespect.

During National Teen Dating Violence Awareness and Prevention Month—and throughout the year—let each of us resolve to do our part to break the silence and create a culture of healthy relationships for all our young people. Adults who respect themselves, their partners, and their neighbors demonstrate positive behaviors to our children—lessons that will help them lead safe and happy lives free from violence.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim February 2011 as National Teen Dating Violence Awareness and Prevention Month. I call upon all Americans to support efforts in their communities and schools, and in their own families, to empower young people to develop healthy relationships throughout their lives and to engage in activities that prevent and respond to teen dating violence.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–2576
Filed 2–2–11; 11:15 am]
Billing code 3195–W1–P

# Presidential Documents

**Executive Order 13564 of January 31, 2011**

## Establishment of the President's Council on Jobs and Competitiveness

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to continue to strengthen the Nation's economy and ensure the competitiveness of the United States and to create jobs, opportunity, and prosperity for the American people by ensuring the availability of non-partisan advice to the President from participants in and experts on the economy, it is hereby ordered as follows:

**Section 1.** There is hereby established within the Department of the Treasury the President's Council on Jobs and Competitiveness (PCJC). The PCJC shall consist of members appointed by the President from among distinguished citizens outside the Federal Government and shall include citizens chosen to serve as representatives of the various sectors of the economy to offer the diverse perspectives of the private sector, employers, and workers on how the Federal Government can best foster growth, competitiveness, innovation, and job creation. The members may also include citizens selected based on their expertise and experience to offer independent advice. The President shall designate a Chair from among the members. A Co-Chair of the President's Council of Advisors on Science and Technology who is not serving in the Federal Government and the Chair and Vice Chair of the President's Export Council shall serve as ex-officio members. The Treasury may provide the PCJC with a staff, as necessary.

**Sec. 2.** The functions of the PCJC are advisory only. The PCJC shall meet regularly and shall:

(a) solicit ideas from across the country about how to bolster the economy and the prosperity of the American people that can inform the decision-making of the President, and with respect to matters deemed appropriate by the President, provide information and recommendations to any executive department or agency (agency) with responsibilities related to the economy, growth, innovation, American competitiveness, or job creation;

(b) report directly to the President on the design, implementation, and evaluation of policies to promote the growth of the American economy, enhance the skills and education of Americans, maintain a stable and sound financial and banking system, create stable jobs for American workers, and improve the long-term prosperity and competitiveness of the American people; and

(c) provide analysis and information with respect to the operation, regulation, and healthy functioning of the economy and other factors that may contribute to the sustainable growth and competitiveness of American industry and the American labor force. As deemed appropriate by the President, this analysis and information shall be provided to the Chairman of the Board of Governors of the Federal Reserve System, the National Economic Council, or any agency with responsibilities related to the economy, growth, innovation, American competitiveness, or job creation.

**Sec. 3.** *Administration of the PCJC.* (a) All agencies and all offices within the Executive Office of the President shall cooperate with the PCJC and provide such information and assistance to the PCJC as the Chair of the PCJC may request, to the extent permitted by law.

(b) The Department of the Treasury shall provide funding and administrative support for the PCJC to the extent permitted by law and within existing appropriations.

(c) Members of the PCJC shall serve without compensation but may receive transportation expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707), consistent with the availability of funds.

**Sec. 4.** *Termination.* The PCJC shall terminate 2 years after the date of this order unless extended by the President.

**Sec. 5.** *Revocation of Executive Order 13501.* Executive Order 13501 of February 6, 2009 (Establishing the President's Economic Recovery Advisory Board), is hereby revoked.

**Sec. 6.** *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the PCJC, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of the Treasury in accordance with the guidelines that have been issued by the Administrator of General Services.

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

(i) authority granted by law to a department or agency, or the head thereof; or

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

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
*January 31, 2011.*

[FR Doc. 2011–2577
Filed 2–2–11; 11:15 am]
Billing code 3195–W1–P

# Reader Aids

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**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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## LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 366/P.L. 112-1**
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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