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Presidential Documents

Title 3—

The President

Presidential Determination No. 2012–02 of October 14, 2011

Provision of U.S. Drug Interdiction Assistance to the Government of Brazil

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Brazil, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

THE WHITE HOUSE,
Washington, October 14, 2011

[FR Doc. 2011–29588
Filed 11–14–11; 8:45 am]
Billing code 4710–10–P

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

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0110]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Citizenship and Immigration Services–016 Electronic Immigration System-3 Automated Background Functions System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services–016 Electronic Immigration System-3 Automated Background Functions System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''Department of Homeland Security/U.S. Citizenship and Immigration Services–016 Electronic Immigration System-3 Automated Background Functions System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective November 15, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202) 272–8000, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703) 235–0780, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) published a notice of proposed rulemaking in the **Federal Register**, 76 FR 60385, September 29, 2011, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions system of records notice was published concurrently in the **Federal Register**, 76 FR 60059, September 28, 2011, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received no comments on the NPRM or SORN and will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''65'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

65. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records is a repository of information held by USCIS to serve its mission of processing immigration benefits. This system also supports certain other DHS programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, Tribal, foreign, or international government agencies. This system is exempted from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. Exemptions from these particular subsections are justified, on a case-by-case basis determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and/or reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations

and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records, or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system, would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: November 2, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–29447 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0109]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Citizenship and Immigration Services–015 Electronic Immigration System-2 Account and Case Management System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services–015 Electronic Immigration System-2 Account and Case Management System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''Department of Homeland Security/U.S. Citizenship and Immigration Services–015 Electronic Immigration System-2 Account and Case Management System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective November 15, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202) 272–8000, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703) 235–0780, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) published a notice of proposed rulemaking in the **Federal Register**, 76 FR 59926, September 28, 2011, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management System of Records. The DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management system of records notice was published concurrently in the **Federal Register**, 76 FR 60070, September 28, 2011, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received two comments on the NPRM and no comments on the SORN which did not address this system of records. After consideration of public comments, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''64'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

64. The DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management is a repository of information held by USCIS to serve its mission of processing immigration benefits. This system also supports certain other DHS programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, Tribal, foreign, or international government agencies. This system is exempted from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. Exemptions from these particular subsections are justified, on a case-by-case basis determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or

apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and/or reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records, or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system, would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: November 2, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–29452 Filed 11–9–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

7 CFR Part 2502

RIN 0503–AA49

Agricultural Career and Employment Grants Program; Correction

AGENCY: Office of Advocacy and Outreach, Departmental Management, USDA.

ACTION: Interim rule with request for comments; correction.

SUMMARY: On November 8, 2011, the Office of Advocacy and Outreach published an interim rule concerning grants to assist agricultural employers and farmworkers by improving the supply, stability, safety, and training of the agricultural labor force. The effective date for the rule was inadvertently omitted. This document establishes the effective date of that November 8 interim final rule.

DATES: The effective date for the interim rule published November 8, 2011, at 76 FR 69114, is November 15, 2011, and is applicable beginning November 8, 2011. Comments on the November 8 interim rule must still be received by the agency on or before December 8, 2011, to be assured of consideration.

ADDRESSES: You may submit comments on the interim rule, identified by RIN 0503–AA49 by any of the following methods:

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

Email: christine.chavez@osec.usda.gov. Include Regulatory Information Number (RIN) number 0503–AA49 in the subject line of the message.

Fax: (202) 720–7136

Mail: Comments may be mailed to the Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 520–A, Stop 9801, Washington DC 20250–9821.

Hand Delivery/Courier: Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 520–A, Washington, DC 20250.

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

FOR FURTHER INFORMATION CONTACT: Christine Chavez, Program Leader, Farmworker Coordination, Office of Advocacy and Outreach, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 9801, Washington, DC 20250, Voice: (202) 205–4215, Fax: (202) 720–7136, Email: *christine.chavez@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

On November 8, 2011 (76 FR 69114), the Office of Advocacy and Outreach published an interim rule. Due to an editing error, the effective date for the rule was omitted.

Dated: November 8, 2011.

Christine Chavez,

Program Leader, Farmworker Coordination.

[FR Doc. 2011–29389 Filed 11–14–11; 8:45 am]

BILLING CODE 3412–89–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in December 2011. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective December 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–(800) 877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for December 2011.[1]

The December 2011 interest assumptions under the benefit payments regulation will be 1.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for November 2011, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during December 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 218, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
218	12–1–11	1–1–12	1.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 218, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
218	12–1–11	1–1–12	1.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 4th day of November 2011.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–29461 Filed 11–14–11; 8:45 am]

BILLING CODE 7709–01–P

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC33

Privacy Act of 1974; Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to this part to reflect consolidation of existing Internal Revenue Service (IRS) systems of records and to continue to exempt the resulting revised systems of records from certain provisions of the Privacy Act. The Office of Chief Counsel has consolidated twelve systems of records into six systems of records. This final rule migrates the previously approved exemptions to the newly revised, renamed, and renumbered systems of records.

DATES: This rule is effective November 15, 2011.

ADDRESSES: Inquiries may be addressed to Sarah Tate, Office of Associate Chief Counsel, Procedure & Administration,

Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sarah Tate, Office of Associate Chief Counsel, Procedure & Administration, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Ms. Tate may be reached via telephone at (202) 622–4570 (not a toll-free call).

SUPPLEMENTARY INFORMATION: When the IRS first promulgated its systems of records in 1975, the Office of Chief Counsel was aligned, in its headquarters operations, by the nature of the work performed and, in its field operations, by the type of the litigation activities performed. In 1998, Congress enacted the Internal Revenue Restructuring & Reform Act (RRA98), which, among other things, mandated the most dramatic organizational changes in the IRS (and the Office of Chief Counsel) since 1952. RRA98 directed the IRS to shift from a geographically based structure to a structure that serves particular groups of taxpayers with similar needs (*i.e.,* individuals, small businesses, large businesses, and tax exempt entities). The Office of Chief Counsel reorganized itself to more closely align to the restructured IRS, and the revised notices simplify the manner in which the Office of Chief Counsel maintains individually identifiable information. This direct final rule does not alter the exemptions claimed for the individually identifiable information maintained in the consolidated systems of records.

The Chief Counsel, IRS has reorganized the twelve systems of records it maintains pursuant to the Privacy Act, which have been consolidated into six systems of records. These systems of records contain information maintained by the IRS for which an exemption has been established previously. On October 2, 1975, the Department published its final rule which included the exemption claimed pursuant 5 U.S.C. 552a(j)(2) and, (k)(2), published at 40 FR 45695, and the exemption claimed pursuant to 5 U.S.C. 552a(k)(5), published at 40 FR 45697.

The Department of the Treasury is publishing separately in the **Federal Register** the notices of the consolidated systems of records to be maintained by IRS.

Under 5 U.S.C. 552a(j)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.''

To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C.552a(j)(2), the Department of the Treasury has previously exempted material which will now be maintained in the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2):

Treasury/IRS 90.001—Chief Counsel Management Information System Records.
Treasury/IRS 90.003—Chief Counsel Litigation and Advice (Criminal) Records.
Treasury/IRS 90.004—Chief Counsel Legal Processing Division Records.
Treasury/IRS 90.005—Chief Counsel Library Records.

The exemption under 5 U.S.C. 552a(j)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).'' To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(k)(2), the Department of the Treasury has previously exempted material that will now be maintained in the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2):

Treasury/IRS 90.001—Chief Counsel Management Information System Records.
Treasury/IRS 90.002—Chief Counsel Litigation and Advice (Civil) Records.
Treasury/IRS 90.004—Chief Counsel Legal Processing Division Records.
Treasury/IRS 90.005—Chief Counsel Library Records.

The exemption under 5 U.S.C. 552a(k)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The following are the reasons why the investigative material contained in the above-referenced systems of records maintained by IRS have been exempted from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and/or 5 U.S.C. 552a(k)(2) since 1975.

(1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation. Further, providing information as required by this provision would alert the individual to the existence of an investigation and afford the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, may enable the individual to avoid detection or apprehension, may enable the destruction or alteration of evidence of the criminal conduct that would form the basis for an arrest, and could impede or impair IRS's ability to investigate the matter. In addition, to provide this type of information may enable individuals to learn whether they have been identified as subjects of investigation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide them with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede or impair IRS's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of

those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide IRS with valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair IRS's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping with these provisions would also discourage other law enforcement and regulatory agencies from freely sharing information with IRS and thus would restrict its access to information necessary to accomplish its mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed, for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that IRS is conducting an investigation into their activities as well as identify the nature, scope, and purpose of that investigation. Providing accountings to the subjects of investigations would alert them to the fact that IRS has information regarding their activities and could inform them of the general nature of that information. The subjects of the investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by altering their operations or by destroying or concealing evidence that would form the basis for detection or apprehension.

(5) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to the individual, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to, and amendment of, records is proposed for the reasons set out in paragraph (2) of this section, this provision should not apply to these systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources of information could disclose investigative techniques and procedures, result in threats or reprisals against confidential informants by the subjects of investigations, and cause confidential informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision could impair IRS's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon review of information developed subsequently, prove particularly relevant and necessary to a law enforcement program. Compliance with the records maintenance criteria listed in the foregoing provision would require IRS to periodically update the investigatory material it collects and maintains in these systems to ensure that the information remains timely and complete. Further, IRS oftentimes will uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, IRS will refer this evidence to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. If required to adhere to the provisions of 5 U.S.C. 552a(e)(1), IRS might be placed in the position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to IRS's attention during the collection and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the above-referenced systems of records would impair IRS's ability to collect, analyze, and disseminate investigative, intelligence, and enforcement information. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify the accuracy of the information obtained. IRS often collects information about the subject of a criminal investigation from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a credible source for information regarding his or her alleged criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual, whom it asks to supply information, of the agency's authority for soliciting the information, whether disclosure of information is voluntary or mandatory, the principal purpose(s) for which the agency will use the information, the routine uses that may be made of the information, and the effects on the individual of not providing all or part of the information. The above-referenced systems of records should be exempted from these provisions to avoid impairing IRS's ability to collect and maintain investigative material. Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or

his or her associates know that a criminal investigation is in progress. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. In collecting information during a criminal investigation, it is often neither possible nor feasible to determine accuracy, relevance, timeliness, or completeness at the time that the information is collected. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when analyzed with other available information, become more relevant as an investigation progresses. Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic review of IRS's investigative records to insure that the records maintained in the system remain timely, accurate, relevant, and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The above-referenced systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The investigatory information in the above-referenced systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which this would exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which IRS is exempted. Exemption from this provision will also protect IRS from baseless civil court actions that might hamper its ability to collect, analyze, and disseminate investigative, intelligence, and law enforcement data.

Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

This paragraph applies to the following system of records maintained by the Internal Revenue Service: Treasury/IRS 90.006—Chief Counsel Human Resources and Administrative Records Files.

The Department has previously exempted material that will now be maintained in the above system of records of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(1) The sections of 5 U.S.C. 552a from which the system of records has been exempted since 1975 include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a(j)(2) or (k)(2) is hereby claimed.

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public. This amendment is the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' and, therefore, does not require a Regulatory Impact Analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Department of the Treasury has determined that this rule will not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 is amended as follows:

■ a. Paragraph (c)(1)(viii) is amended by revising the entry for ''IRS 90.001''.

■ b. Paragraph (c)(1)(viii) is further amended by adding entries for ''IRS 90.003''; ''IRS 90.004''; and ''IRS 90.005'' to the table in numerical order.

■ c. Paragraph (g)(1)(viii) is amended by removing entries for ''IRS 90.002''; ''IRS 90.004''; ''IRS 90.005''; ''IRS 90.009''; ''IRS 90.010''; ''IRS 90.013''; and ''IRS 90.016''.

■ d. Paragraph (g)(1)(viii) is further amended by adding entries for ''IRS 90.001''; ''IRS 90.002'';''IRS 90.004'', and ''IRS 90.005'' to the table in numerical order.

■ e. Paragraph (m)(1)(viii) is amended by removing entries for ''IRS 90.003'' and ''IRS 90.011''.

■ f. Paragraph (m)(1)(viii) is further amended by adding ''IRS 90.006'' to the table in numerical order.

The revisions and additions read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(c) * * *

(1) * * *

(viii) * * *

Number	System name
* *	* * * *
IRS 90.001	Chief Counsel Management Information System Records.
IRS 90.003	Chief Counsel Litigation and Advice (Criminal) Records.
IRS 90.004	Chief Counsel Legal Processing Division Records.
IRS 90.005	Chief Counsel Library Records.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

Number	System name
* *	* * * *
IRS 90.001	Chief Counsel Management Information System Records.
IRS 90.002	Chief Counsel Litigation and Advice (Criminal) Records.
IRS 90.004	Chief Counsel Legal Processing Division Records.
IRS 90.005	Chief Counsel Library Records.

* * * * *

(m) * * *

(1) * * *

(viii) * * *

Number	System name
* *	* * * *
IRS 90.006	Chief Counsel Human Resources and Administrative Records.

* * * * *

Dated: October 24, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency and Records.

[FR Doc. 2011–29385 Filed 11–14–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–1011]

RIN 1625–AA08

Special Local Regulations; Seminole Hard Rock Winterfest Boat Parade, New River and Intracoastal Waterway, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the New River and the Intracoastal Waterway in Fort Lauderdale, Florida during the Seminole Hard Rock Winterfest Boat Parade on Saturday, December 10, 2011. The marine parade will consist of approximately 120 vessels. The marine parade will begin at Cooley's Landing Marina and end at Lake Santa Barbara. From Cooley's Landing Marina, the marine parade will transit east on the New River, then head north on the Intracoastal Waterway to Lake Santa Barbara. These special local regulations are necessary to provide for the safety of life on navigable waters during the marine parade. The special local regulations consist of a series of moving buffer zones around participant vessels as they transit from Cooley's Landing Marina to Lake Santa Barbara. Persons and vessels that are not participating in the marine parade are prohibited from entering, transiting through, anchoring in, or remaining within any of the buffer zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 2:30 p.m. until 11:30 p.m. on December 10, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–1011 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1011 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; *telephone* (305) 535–8724, *email Jennifer.S.Makowski@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, *telephone* (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the Seminole Hard Rock Winterfest Boat Parade with sufficient time to publish an NPRM and to receive public comments prior to the

event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to marine parade participants, participant vessels, spectators, and the general public.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the rule is to insure safety of life on the navigable waters during the Seminole Hard Rock Winterfest Boat Parade.

Discussion of Rule

On December 10, 2011, Winterfest, Inc., is hosting the Seminole Hard Rock Winterfest Boat Parade on the New River and the Intracoastal Waterway in Fort Lauderdale, Florida. The marine parade will consist of approximately 120 vessels. The marine parade will begin at Cooley's Landing Marina and transit east on the New River, then head north on the Intracoastal Waterway to Lake Santa Barbara. Although this event occurs annually, and special local regulations have been promulgated in the Code of Federal Regulations at 33 CFR 100.701, these regulations do not provide for special local regulations in the New River, nor do they provide sufficient detail regarding the special local regulations that will be enforced during the marine parade. Therefore, the special local regulations set forth in 33 CFR 100.701 are inapplicable for this year's Seminole Hard Rock Winterfest Boat Parade.

The special local regulations consist of a series of buffer zones around vessels participating in the Seminole Hard Rock Winterfest Boat Parade. These buffer zones are as follows: (1) All waters within 75 yards of the lead marine parade vessel; (2) all waters within 75 yards of the last marine parade vessel; and (3) all waters within 50 yards of all other marine parade vessels. Notice of the special local regulations, including the identities of the lead marine parade vessel and the last marine parade vessel, will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. These special local regulations will be enforced from 2:30 p.m. until 11:30 p.m. on December 10, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring, or remaining within the buffer zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the buffer zones may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the buffer zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Regulatory Planning and Review, and 12866, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for nine hours; (2) although persons and vessel will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the New River and the Intracoastal Waterway encompassed within the special local regulations from 2:30 p.m. until 11:30 p.m. on December 10, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a marine parade. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T07–1011 to read as follows:

§ 100.35T07–1011 Special Local Regulations; Seminole Hard Rock Winterfest Boat Parade, New River and Intracoastal Waterway, Fort Lauderdale, FL.

(a) *Regulated Areas.* The following buffer zones are regulated areas during the Seminole Hard Rock Winterfest Boat Parade:

(1) All waters within 75 yards of the lead marine parade vessel;

(2) All waters within 75 yards of the last marine parade vessel; and

(3) All waters within 50 yards of all other marine parade vessels. The identities of the lead marine parade vessel and the last marine parade vessel will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The marine parade will begin at Cooley's Landing Marina and end at Lake Santa Barbara. From Cooley's Landing Marina, the marine parade will transit east on the New River, then head north on the Intracoastal Waterway to Lake Santa Barbara.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local

Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(c) *Enforcement Date.* This rule will be enforced from 2:30 p.m. until 11:30 p.m. on December 10, 2011.

Dated: October 27, 2011.

C.P. Scraba,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2011–29398 Filed 11–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0976]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, National Harbor Access Channel, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon specified waters of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a floating platform located within the National Harbor Access Channel, in Prince Georges County, Maryland. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: This rule is effective from 6 p.m. on November 19, 2011 through 8 p.m. on November 20, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0976 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0976 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone (410) 576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives because immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled event.

Discussion of Rule

Pyrotecnico, of New Castle, Pennsylvania, will conduct a fireworks display launched from a floating platform located on the Potomac River at National Harbor, Maryland scheduled on November 19, 2011 at approximately 6:45 p.m. If necessary, due to inclement weather, the fireworks display may be scheduled on November 20, 2011 at approximately 6:45 p.m.

The Coast Guard is establishing a temporary safety zone on certain waters of the Potomac River, National Harbor Access Channel, within a 50 yards radius of a fireworks discharge platform in approximate position latitude 38°47′01″ N, longitude 077°01′15″ W, located at National Harbor, Maryland (NAD 1983). The temporary safety zone will be enforced from 6 p.m. through 8 p.m. on and November 19, 2011, and if necessary due to inclement weather, from 6 p.m. through 8 p.m. on November 20, 2011. The effect of this temporary safety zone will be to restrict navigation in the regulated area during the fireworks display. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Potomac River outside the safety zone. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Although this safety zone will restrict some vessel traffic, there is little vessel traffic associated with commercial fishing in the area, and recreational boating in the area can transit waters outside the safety zone. In addition, the effect of this rule will not be significant because the safety zone is

of limited duration and limited size. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit, or anchor in a portion of the Potomac River, National Harbor Access Channel, located at National Harbor, MD, from 6 p.m. through 8 p.m. on November 19, 2011, and if necessary due to inclement weather, from 6 p.m. through 8 p.m. on November 20, 2011. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. In addition, before the effective periods, the Coast Guard will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0976 to read as follows:

§ 165.T05–0976 Safety Zone; Fireworks Display, Potomac River, National Harbor Access Channel, MD.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Potomac River, National Harbor Access Channel, within a 50 yards radius of a fireworks discharge platform in approximate position latitude 38°47′01″ N, longitude 077°01′15″ W, located at National Harbor, Maryland (NAD 1983).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0976.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port Baltimore.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port Baltimore or his designated representative by telephone at (410) 576–2693 or on VHF–FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions. Captain of the Port Baltimore* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 6 p.m. through 8 p.m. on November 19, 2011 and, if necessary due to inclement weather, from 6 p.m. through 8 p.m. on November 20, 2011.

Dated: October 20, 2011.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2011–29409 Filed 11–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1017]

RIN 1625–AA00

Safety Zone; Department of Defense Exercise, Hood Canal, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around vessels involved in a Department of Defense exercise in Hood Canal, WA that will take place on November 21, 2011. A safety zone is necessary to ensure the safety of the maritime public during the exercise. The zone will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port.

DATES: This rule is effective from 6 a.m. until 11:59 p.m. on November 21, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1017 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1017 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Ian S. Hanna, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; *telephone* (206) 217–6045, *email SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, *telephone* (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to the public interest, since the event requiring the establishment of this safety zone would be over before a comment period would end. These Department of Defense (DOD) vessels have an important and urgent need to perform this training in order to be ready to protect U.S. persons, assets, and waters; it would be contrary to the public interest to delay the exercise to allow for a comment period. Further, publishing an NPRM is unnecessary as the safety zone is neither burdensome, nor controversial. The safety zone created is short in duration, and vessels can transit around it, or through it with permission of the Captain of the Port (COTP).

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Good cause exists because the event would be over before the final rule could be published. These DOD vessels have an important and urgent need to perform this training in order to be ready to protect U.S. persons, assets,

and waters; it would be contrary to the public interest to delay this important exercise to allow for a delayed effective date.

Background and Purpose

The DOD will be conducting a training exercise in the northern part of Hood Canal, WA. During the exercise, tactical vessels will be maneuvering through the Hood Canal from the entrance of Dabob Bay to Foulweather Bluff. This exercise will include fast moving surface vessels, smoke machines, and pyrotechnics. This safety zone is being created to ensure the safety of the maritime public and vessels participating in the exercise by preventing collisions between exercising vessels and the maritime public, and by keeping the maritime public a safe distance away from potentially startling or disorienting smoke, bright flashes, and loud noises.

Discussion of Rule

The temporary safety zone established by this rule will prohibit any person or vessel from entering or remaining within 1000 yards of any vessel involved in the DOD exercise while such vessel is transiting Hood Canal, WA between Foul Weather Bluff and the entrance to Dabob Bay. Members of the maritime public will be able to identify participating vessels by their gray color and orange Coast Guard stripe on the hull. The COTP may be also assisted in the enforcement of the zones by other federal, state, or local agencies.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard bases this finding on the fact that the safety zones will be in place for a limited period of time and vessel traffic will be able to transit around the safety zones. Maritime traffic may also request permission to transit through the zones from the COTP, Puget Sound or Designated Representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters covered by the safety zone while it is in effect. The rule will not have a significant economic impact on a substantial number of small entities because the safety zone will be in place for a limited period of time and maritime traffic will still be able to transit around the safety zone. Maritime traffic may also request permission to transit though the zones from the COTP, Puget Sound or Designated Representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–200 to read as follows:

§ 165.T13–200 Safety Zone; Department of Defense Exercise, Hood Canal, Washington.

(a) *Location.* The following area is a safety zone: All waters encompassed within 1000 yards of any vessel that is involved in the Department of Defense exercise while such vessel is transiting Hood Canal, WA between Foul Weather Bluff and the entrance to Dabob Bay. Vessels involved will be various sizes, including 25, 33, and 64 feet in length and can be identified as being gray in color with an orange United States Coast Guard stripe on the vessels' hull.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the Captain of the Port or his Designated Representative. See 33 CFR part 165, subpart C, for additional information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at (206) 217–6001.

(c) *Enforcement Period.* This rule is effective on November 21, 2011 from 6 a.m. to 11:59 p.m., unless canceled sooner by the Captain of the Port.

Dated: October 27, 2011.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–29408 Filed 11–14–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0065]

RIN 0651–AC64

Fee for Filing a Patent Application Other Than by the Electronic Filing System

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Leahy-Smith America Invents Act provides an additional fee of $400 for applications not filed electronically. This final rule revises the rules of practice to include the fee for applications not filed electronically.

DATES: *Effective Date:* November 15, 2011.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7725; or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: Section 10(h) of the Leahy-Smith America Invents Act provides that an additional fee of $400 shall be established for each application for an original (*i.e.,* non-reissue) patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director of the United States Patent and Trademark Office (USPTO). *See* Public Law 112–29, 125 Stat. 283, 319 (2011). Section 10(h) also provides that this fee is reduced by 50 percent for small entities under 35 U.S.C. 41(h)(1). *See id.* Section 10(h) also provides that this new fee is effective on November 15, 2011 (sixty days after the date of enactment of the Leahy-Smith America Invents Act). *See id.* This final rule revises 37 CFR 1.16 and 1.445 to include the fee for applications not filed electronically.

The USPTO encourages applicants to file their applications via its electronic filing system (EFS-Web) to avoid the fee provided for by section 10(h) of the Leahy-Smith America Invents Act. Information concerning electronic filing via EFS-Web is available from the USPTO's Patent Electronic Business Center (EBC) at *http://www.uspto.gov/patents/process/file/efs/index.jsp.*

Section-by-Section Discussion

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.16: Section 1.16(t) is added to require the non-electronic filing fee of $400 ($200 for a small entity) for any application under 35 U.S.C. 111(a) (*i.e.,* any nonprovisional application) that is filed on or after November 15, 2011, other than by the USPTO's electronic filing system (EFS-Web), except for a reissue, design, or plant application.

Section 1.445: The introductory text of § 1.445(a) is amended to add ''by law or'' prior to ''by the Director under the authority of 35 U.S.C. 376'' because the fee for filing an application other than by the USPTO's electronic filing system is established by law (section 10(h) of the Leahy-Smith America Invents Act). Section 1.445(a) is amended to set out the current transmittal fee as a basic fee in § 1.445(a)(1)(i) and to add a new § 1.445(a)(1)(ii) setting out the non-electronic filing fee of $400 ($200 for a small entity) for any Patent Cooperation Treaty (PCT) international application designating the United States of America that is filed on or after November 15, 2011, other than by the USPTO's electronic filing system (EFS-Web), except for a plant application. Section 1.445(a)(1)(ii) does not contain a reference to reissue, design, or provisional applications as these types of applications cannot be filed via the PCT. While § 1.445(a)(1)(ii) contains a reference to plant applications, the USPTO advises against filing a plant application under the PCT because many countries do not consider this subject matter to be patent-eligible, and the color drawings or color photographs that are often necessary for plant applications (§ 1.165(b)) are not permitted in PCT international applications (PCT Applicant's Guide (¶ 5.159) (Oct. 2011)).

The USPTO will consider applications filed with the USPTO via the Department of Defense Secret Internet Protocol Router Network (SIPRNET) as filed via the USPTO's electronic filing system for purposes of § 1.16(t) and § 1.445(a)(1)(ii).

Rule Making Considerations

A. Administrative Procedure Act (APA): Section 10(h) of the Leahy-Smith America Invents Act provides that an additional fee of $400 ($200 for a small entity) shall be established for each application for an original (*i.e.,* non-reissue) patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director of the USPTO. The changes in this final rule simply reiterate the provisions of section 10(h) of the Leahy-Smith America Invents Act and are thus merely interpretative. *See Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291–1292 (DC Cir. 1991) (regulation that reiterates statutory language does not require notice and comment procedures). Accordingly, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rule making for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)). In addition, thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) or any other law. *See* 5 U.S.C. 553(d) (requiring thirty-day advance publication for substantive rules).

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 13132 (Federalism): This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

D. Executive Order 12866 (Regulatory Planning and Review): This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

E. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rule making docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

F. Executive Order 13175 (Tribal Consultation): This rule making will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal government; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effect): This rule making is not significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rule making is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The change in this rule making is not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule making is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: The rule making will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1968. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable, because this rule making does not involve the use of technical standards.

O. Paperwork Reduction Act: This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As discussed previously, the changes in this final rule simply reiterate the provisions of section 10(h) of the Leahy-Smith America Invents Act. The collection of information involved in this rule making has been reviewed and previously approved by OMB under OMB control numbers 0651–0021 and 0651–0032. This notice does not add any additional information collection requirements for patent applicants or patentees. Therefore, the USPTO is not resubmitting information collection packages to OMB for its review and approval because the changes proposed in this notice do not affect the information collection requirements associated with the information collections under OMB control numbers 0651–0021 and 0651–0032. The USPTO will update fee calculations for the currently approved information collections associated with this rule making upon submission to the OMB of the renewals of those information collections.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses, and Biologics.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by adding paragraph (t) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(t) Non-electronic filing fee for any application under 35 U.S.C. 111(a) that is filed on or after November 15, 2011, other than by the Office electronic filing system, except for a reissue, design, or plant application:

By a small entity (§ 1.27(a))	$200.00
By other than a small entity	$400.00

* * * * *

■ 3. Section 1.445 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the Director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14) consisting of:

(i) A basic portion	$240.00

(ii) A non-electronic filing fee portion for any international application designating the United States of America that is filed on or after November 15, 2011, other than by the Office electronic filing system, except for a plant application:

By a small entity (§ 1.27(a))	$200.00
By other than a small entity	$400.00

* * * * *

Dated: November 7, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–29462 Filed 11–14–11; 8:45 am]

BILLING CODE 3510–16–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3055

[Docket No. RM2011–14; Order No. 947]

Performance Measurement

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule addressing reporting requirements for the measurement of the level of service the Postal Service provides in connection with Stamp Fulfillment Services following consideration of comments filed in response to a proposed rule. No commenter opposed the proposed rule. The final rule is therefore adopted as proposed. Adoption of this rule will foster greater transparency and accountability.

DATES: *Effective date:* December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History: 76 FR 55619 (September 8, 2011).

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I. Introduction

This rulemaking is part of the series of rulemakings initiated by the Postal Regulatory Commission (Commission) to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). The final rules described herein, which establish reporting requirements for the measurements of level of service afforded by the Postal Service in

connection with Stamp Fulfillment Services (SFS), are adopted as proposed. The reporting of level of service is required by 39 U.S.C. 3652(a)(2)(B)(i) as part of the Postal Service's annual report to the Commission and supporting documentation. This is a part of the Commission's implementation of a modern system of rate regulation for market dominant products to ensure service is not impaired as a result of the greater flexibility provided to the Postal Service under the PAEA in light of the price cap requirements. *See* 39 U.S.C. 3622 and 3651.

II. Procedural History

An SFS fee is charged for order processing and handling stamp and product orders received by mail, phone, fax, or Internet at the Postal Service's Stamp Fulfillment Services center in Kansas City, Missouri. Orders can include stamps, stamped cards, envelopes, stationery, and other philatelic items.

On July 13, 2010, the Commission added SFS to the market dominant product list pursuant to a Postal Service request.[1] On June 16, 2011, the Commission granted a Postal Service request for a temporary waiver from reporting service performance for SFS until the filing date for the 2011 Annual Compliance Report. The Commission further asked the Postal Service to either file a request for a semi-permanent exception from reporting or begin the consultation process for establishing service standards (and measurement systems) prior to August 1, 2011.[2]

By letter dated July 29, 2011, the Postal Service informed the Commission of its intent to institute an internal measurement system for SFS and asked for Commission comment.[3] The Postal Service proposed service standards, measurement methodologies, and reporting requirements. The Postal Service indicated that it would formalize its proposed service standards through a **Federal Register** notice.

On August 25, 2011, the Commission responded to the Postal Service request for comment.[4] The Commission concurred with the measurement approach that the Postal Service proposed and indicated that the Commission would initiate a rulemaking to make the Commission's reporting rules consistent with the Postal Service's reporting proposals.

On September 1, 2011, the Commission initiated the instant proceeding to consider rules for periodic reporting SFS service performance measurements.[5] The Public Representative and David B. Popkin (Popkin) commented on the proposed rules.[6] The Postal Service filed reply comments.[7]

III. Background of Postal Service Proposals

A. Proposed Measurement System

The Postal Service proposed to measure the time from SFS order entry to the time a SFS order is placed on a mail truck manifest for entry into the mailstream. The transit time once an order is entered into the mailstream to delivery is not included as part of the SFS measurement.

A measurement starts when an order is entered into the National Customer Management System (NCMS). NCMS manages SFS inventory, general ledger, order history, and customer accounts.

A measurement ends when the order is logically closed out in the Automated Fulfillment Equipment System (AFES).[8] The AFES system interacts with NCMS and is used to fulfill orders.

B. Proposed Service Standards

The Postal Service's proposed service standards vary depending upon how a customer's order was received.[9] The Postal Service proposes the following three service standards:

- Internet Orders: Non-Philatelic/Non-Custom
  Less than or equal to 2 business days
- Business Level Orders
  Less than or equal to 5 business days
- Philatelic/Custom and all Other Order Sources
  Less than or equal to 10 business days

C. Proposed Service Goals

For each of the three proposed service standards, the Postal Service proposes a service goal or target of achieving each service standard at least 90 percent of the time.

IV. Service Performance Measurement Reporting

The Postal Service proposed to report the percentage of time that SFS meets or exceeds the applicable proposed service standard. The Postal Service also proposed to report service variances. Service variances will report the total percentage of orders fulfilled within the applicable service standard, plus the percentage that are fulfilled 1, 2, or 3 days late. Reporting is to be disaggregated by how a customer's order was received. Percentage on time and service variance reporting are to be provided to the Commission both on a quarterly and on an annual basis.

V. Service Performance Measurement Reporting Rules

The Commission proposed to modify 39 CFR 3055.65 to include a special reporting requirement for SFS. Section 3055.65 specifies the requirements for the periodic reporting (quarterly) of service performance achievements for special services, which includes SFS.[10]

The special reporting requirement specifies that the Postal Service will report (1) SFS on-time service performance (as a percentage rounded to one decimal place); and (2) SFS service variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard.

Both items shall be disaggregated by customer order entry method. The Postal Service currently proposed three customer order entry methods: (1) Internet Orders: Non-Philatelic/Non-Custom; (2) Business Level Orders; and

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[1] Docket No. MC2009–19, Order No. 487, Order Accepting Product Descriptions and Approving Addition of Stamp Fulfillment Services to the Mail Classification Schedule Product Lists, July 13, 2010.

[2] Docket Nos. RM2011–1, RM2011–4 and RM2011–7, Order No. 745, Order Concerning Temporary Waivers and Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, June 16, 2011.

[3] Letter from Kevin A. Calamoneri, Managing Counsel Corporate & Postal Business Law, United States Postal Service to Shoshana M. Grove, Secretary, Postal Regulatory Commission, July 29, 2011.

[4] Letter from Shoshana M. Grove, Secretary, Postal Regulatory Commission to Kevin A. Calamoneri, Managing Counsel Corporate & Postal Business Law, United States Postal Service, August 25, 2011.

[5] Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements for Stamp Fulfillment Services, September 1, 2011 (Order No. 837).

[6] Public Representative's Comments in Response to Order No. 837 (PR Comments); Comments/Motion of David B. Popkin, September 22, 2011 (Popkin Comments); Additional Comments of David B. Popkin, October 4, 2011 (Popkin Additional Comments). In response to the Popkin Comments, the Postal Service filed a Response of United States Postal Service to Comments/Motion of David B. Popkin, September 28, 2011. The Postal Service attached the Kevin A. Calamoneri and Shoshana M. Grove letters cited in footnotes 3 and 4, respectively, a description of the Postal Service's proposed service performance measurement plan, and a copy of its proposed **Federal Register** notice for SFS.

[7] Reply Comments of United States Postal Service, October 12, 2011 (Postal Service Reply Comments).

[8] A logical closure is an indication that an order has been fulfilled, packaged, labeled, and placed on a manifest for pickup by a Postal Service truck before entering the mailstream.

[9] As previously stated, the Postal Service's proposed service standards are not the subject of this rulemaking and can best be addressed by interested persons through a response to the Postal Service's **Federal Register** notice on this subject matter.

[10] Note that section 3055.31(e) currently requires quarterly data to be aggregated to an annual level and reported to the Commission.

(3) Philatelic/Custom and all Other Order Sources. By generically referring to the three proposed methods as ''customer order entry method,'' the Postal Service is provided flexibility to propose other methods to the Commission for future implementation without requiring a rule change.

VI. Review of Comments

Three parties, the Public Representative, Popkin, and the Postal Service, provided comments in this docket. No party opposed adoption of the reporting rules as proposed. However, both the Public Representative and Popkin provided significant comments on the Postal Service's proposed measurement system and service standards.

A. Public Representative Comments

The Public Representative questions whether the data reported will be meaningful based upon the Postal Service's selection of service standards. He submits that ''one purpose of service performance reporting is to make public service performance results that ultimately prompt further improvements in service by the Postal Service.'' PR Comments at 3. He contends that the Postal Service has selected service standards that are relatively easy to meet. Thus, he asserts there will be no impetus to improve the fulfillment of SFS orders.

To develop meaningful service standards, the Public Representative suggests that the Postal Service be required to report, for the first 3 years after implementation, the percentage of orders fulfilled for each business day of the 2-, 5-, and 10-day service standards. He argues that this would establish a service performance baseline for determining whether the reported results are meaningful. *Id.* at 3–4.

The Public Representative further suggests that the Postal Service be required to define and describe the service standards for Internet Orders: (1) Non-Philatelic/Non-Custom; (2) Business Level Orders; and (3) Philatelic/Custom and all Other Order Sources so it is clear what is being measured. *Id.* at 4.

B. Popkin Comments

Popkin, like the Public Representative, questions whether the data reported will be meaningful. Popkin Comments at 2. Based on his observations, Popkin contends that the 10 business day standard will be met virtually all the time, thus not providing any challenge to the Postal Service to improve service. *Id.;* Popkin Additional Comments at 2–3. Popkin suggests that the Postal Service be required to provide data over the past few years to evaluate the 10-day standard. Popkin Comments at 2; Popkin Additional Comments at 2–3, 4–5.

Popkin complains of the lack of opportunity to comment on the Postal Service's SFS service standards because the standards appear as a final rule in the **Federal Register**. He is also critical of the Commission for focusing on the reporting requirements instead of the Postal Service's service standards. Popkin Additional Comments at 1–2.

During the comment period, Popkin submitted a Freedom of Information Act request directed to the Postal Service seeking information on SFS order fulfillments. *Id.* at 3. Popkin contends the information provided supports his allegation that orders are being processed in substantially less time than indicated by the service standards.

Popkin notes that orders received during system downtime or catastrophic system failure, and pre-orders will be excluded from service standard reporting. He argues that these situations should not be excluded from reporting. *Id.* at 4–5.

Popkin also argues that the reporting categories should be clarified and better defined. *Id.* at 5.

C. Postal Service Reply Comments

The Postal Service's Reply Comments address the issues raised by the Public Representative and Popkin and conclude that no change is necessary to its proposed measurement system and service standards.

The Postal Service states that it considered the questions raised by the Public Representative and Popkin while establishing a measurement system and service standards. Postal Service Reply Comments at 4. The Postal Service discusses the data it had available in making its decisions and the limitations of the data provided to Popkin. *Id.* at 4–5. It comments on its selection of reporting categories associated with its measurement system design. *Id.* at 5. It explains that customer expectations and volumes associated with the publication of a catalog and the holiday season play a role in establishing service standards. *Id.* at 5–6. Noting that Popkin's comments are based on his personal perception (one of 3 million orders received yearly), the Postal Service contends that it has to consider a variety of order scenarios when establishing service standards. *Id.* at 7–8.

The Postal Service believes that pre-orders are properly excluded from measurement because the creation date for the order could be weeks before the product is allowed to ship. The Postal Service notes that an order containing a pre-ordered item is split into two orders, with the items that can be fulfilled processed immediately. *Id.* at 7.

The Postal Service also contends that planned system downtimes and system failures are properly excluded from measurement. *Id.* The Postal Service describes system downtimes as audit periods or planned system upgrade periods. It states that during system downtimes customers are told to ''please expect longer timeframe for delivery.'' *Id.*

The Postal Service does not believe it is necessary to report daily fulfillments as suggested by the Public Representative and Popkin for the purpose of evaluating the appropriateness of the selected service standards. *Id.* at 8–9. The Postal Service argues that this is asking the Commission to substitute its judgment for that of the Postal Service in an area that is within the realm of the Postal Service. The Postal Service acknowledges that the Commission has a range of regulatory tools at its disposal if there is reason to believe that the service standards are not meaningful.

Finally, the Postal Service contends that it cannot provide further definitions regarding service standard categories because data is not fully available at this time. *Id.* at 9.

VII. Final Rule

The Commission adopts the SFS service performance reporting requirements as proposed. The rules will be incorporated into the Commission's rules of practice and procedure by modifying the periodic reporting of service performance achievements for special services found in 39 CFR 3055.65.

Both the Public Representative and Popkin believe the Postal Service's proposed service standards will be exceptionally easy to meet and provide little incentive for improvement in service. Both suggest temporarily reporting time to fulfillment on a daily basis to judge the appropriateness of the proposed standards.

The Commission concurs that a purpose of service performance measurement is to drive improvement in service. However, costs that drive some improvement must be balanced with the value of results. To justify improvements in service, other factors also must be considered, such as customer needs and expectations, and the capabilities of the system to provide that service. The Postal Service indicates that it has considered these factors in formulating its initial

proposals. The Commission will not require reporting of time to fulfillment on a daily basis at this point. The Commission first would like to review the ability of the Postal Service to meet its service standards as proposed before suggesting any changes. A Commission review of this service could be initiated if future demonstration that customer needs or expectations are not being met. As noted by the Postal Service, if in the future the Commission does not believe SFS service performance reporting is providing meaningful data, the Commission has the authority to direct changes in measurement systems and standards.

Popkin contends that orders received during system downtime or catastrophic system failure, and pre-orders should not be excluded from service standard reporting. The Commission currently is willing to accept excluding planned downtimes so long as customers are notified of these occurrences as indicated by the Postal Service. However, the Commission believes that system failures (unscheduled events) should be included in the reporting of service performance. Infrequent events can be explained within the data reports. Frequent events might indicate a systemic problem that requires immediate attention. The Commission recommends that the Postal Service revisit the decision to exclude system failures.

The Postal Service states that pre-orders may be received well in advance of fulfillment. This creates a problem for determining when to start-the-clock on measurement. The Commission agrees that pre-orders create a start-the-clock issue and that it need not be addressed at this time.

The Public Representative and Popkin contend that the reporting categories should be clarified and better defined. The Commission reminds the Postal Service that it must provide a description of what is being measured with each annual report to the Commission. *See* 39 CFR 3055.2(e)(1). The Postal Service is directed to ensure that accurate descriptions of the reporting categories are provided at that time.

VIII. Ordering Paragraphs

It is ordered:

1. The Commission amends its rules of practice and procedure by modifying the periodic reporting of service performance achievements for special services found in 39 CFR 3055.65. The changes to 39 CFR 3055.65 appear following the signature of this order.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3055

Administrative practice and procedure; Postal service; Reporting and recordkeeping requirements.

By the Commission.

Shoshana M. Grove,

Secretary.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

■ 1. The authority citation for part 3055 continues to read as follows:

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e), 3657(c).

■ 2. In § 3055.65, add paragraph (d) to read as follows:

§ 3055.65 Special Services.

* * * * *

(d) *Additional reporting for Stamp Fulfillment Service.* For Stamp Fulfillment Service, report:

(1) The on-time service performance (as a percentage rounded to one decimal place), disaggregated by customer order entry method; and

(2) The service variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard, disaggregated by customer order entry method.

[FR Doc. 2011–29391 Filed 11–14–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0029–201103; FRL–9490–5]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Charlotte-Gastonia-Rock Hill, NC and SC; Determination of Attainment of the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the ''bi-state Charlotte Area'') is composed of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. This determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2008–2010 showing that the bi-state Charlotte Area has monitored attainment of the 1997 8-hour ozone NAAQS. Under the provisions of EPA's ozone implementation rule the requirements for the States of North Carolina and South Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM) analyses, reasonable further progress (RFP) plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, shall be suspended for as long as the Area continues to attain the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to comments received on EPA's April 12, 2011, proposed rulemaking.

DATES: *Effective Date:* This final rule is effective on December 15, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2011–0029. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Zuri Farngalo, Regulatory Development Section, Air Planning

Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.* Mr. Farngalo may be reached by phone at (404) 562–9152 or via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is EPA's response to comments?
IV. What is EPA's final action?
V. What are the statutory and Executive Order reviews?

I. What action is EPA taking?

EPA is determining that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality-assured, quality-controlled and certified ambient air monitoring data that shows the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS based on the 2008–2010 data. Preliminary data available for 2011 are consistent with continued attainment of the 1997 8-hour ozone standard.

Other specific requirements of the determination and the rationale for EPA's final action are explained in the notice of proposed rulemaking published on April 12, 2011, (76 FR 20293) and will not be restated here. The comment period closed on May 12, 2011. EPA received one set of adverse comments. In this action, EPA is responding to those adverse comments.

II. What is the effect of this action?

In accordance with 40 CFR 51.918, this final determination suspends the requirements for North Carolina and South Carolina to submit attainment demonstrations, associated RACM, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS in the bi-state Charlotte area, as long as the Area continues to meet the 1997 8-hour ozone NAAQS. Finalizing this action does not constitute a redesignation of the bi-state Charlotte Area to attainment for the 1997 8-hour ozone NAAQS under section 107(d)(3) of the Clean Air Act (CAA or Act), nor is it a determination that the States have met all requirements for redesignation of the Area.

III. What is EPA's response to comments?

EPA received one set of comments from Robert Ukeiley on the April 12, 2011, proposed determination of attainment for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter cites CAA section 110(l) and asserts that EPA's proposed determination is not in compliance with CAA section 110(l). Specifically, the Commenter states: ''Clean Air Act § 110(l) provides that the 'Administrator shall not approve a revision of a plan if the revision would interfere with an applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this chapter.' '' 42 U.S.C. 7410(l). The Commenter argues that EPA may not make the determination without providing an analysis under section 110(l).

Response 1: EPA disagrees with the Commenter that a section 110(l) analysis is required. This action is not approving a SIP revision, and thus CAA section 110(l) is not applicable. CAA section 110(l) applies explicitly and only to a ''revision to an implementation plan.'' EPA's rulemaking here is restricted to EPA's determination, based on ambient air quality, that the Area is attaining the 1997 8-hour ozone standard. It is not a SIP revision, and thus section 110(l) is by its own terms not applicable to this rulemaking. It is not this determination of attainment, but rather EPA's ozone implementation rule, 40 CFR 51.918, that specifies the consequence of the determination as suspension of the area's obligations to submit an attainment demonstration, a RFP plan, contingency measures and other planning requirements related to attainment as SIP revisions for as long as the area continues to attain. In any case, the requirements that are suspended by the regulation are related solely to attainment for the 1997 8-hour ozone standard. EPA is determining, and the Commenter does not contest, that the area is attaining that standard and the suspension of attainment planning SIP submissions lasts only as long as the area is meeting that standard. No other requirements are suspended. The Commenter is incorrect in arguing that the determination of attainment would delay implementation of measures needed for attainment of the 1997 8-hour ozone standard, and that it would relax SIP control measures. This action has no effect on control measures, or air quality, in the area. For example, contrary to Commenter's contention, reasonably available control technology (RACT) requirements for the 1997 8-hour ozone standard (or for any other standard), are not suspended or delayed by this determination, nor by 40 CFR 51.918. In sum, no evaluation under section 110(l) is required by law, and even if such an evaluation were required, EPA would conclude that this determination of attainment would not interfere with attainment, reasonable further progress towards attainment, or any other applicable requirement of the CAA.

Comment 2: The Commenter claims that the attainment determination ''effectively relax[es] the SIP by staying its implementation,'' and goes on to say that ''the **Federal Register** notice as well as the docket are devoid of any analysis of how delaying implementation of the attainment demonstration, RACM, [RFP], contingency measures and other planning requirements related to attainment of the 85 [parts per billion (ppb)] ozone NAAQS will interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides [NO_2] NAAQS.'' Further, the Commenter states that ''[t]he notice and docket are also devoid of any analysis of how delaying implementation of the various 85 ppb ozone nonattainment SIP provisions will interfere with attaining, making reasonable further progress, and maintaining the other NAAQS through co-benefits. For example, transportation control measures should have the co-benefit of reduced carbon monoxide [CO] and sulfur dioxide [SO_2] emissions from mobile sources.''

Response 2: The sole question addressed by EPA's rulemaking is whether the monitored ambient air quality in the Area shows that the Area has attained the 1997 8-hour ozone standard.[1] The Commenter does not contest EPA's finding that the bi-State Charlotte Area meets this NAAQS. Upon EPA's final determination that the Area has attained the standard, 40 CFR 51.918 provides that the CAA requirement to submit planning SIPs associated with attainment of that standard are suspended for as long as the Area continues to have ambient air quality data that meets that NAAQS. This regulation, which was upheld by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) in *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009), is based on the principle that when an area is already attaining a standard, and continues in attainment, there is no basis for requiring planning SIPs to attain that

[1] EPA notes that the 1997 8-hour ozone NAAQS as published in a July 18, 1997, (62 FR 38856) is 0.08 parts per million (ppm), which is effectively 0.084 ppm or 84 ppb (due to the rounding convention) and not 85 ppb as the Commenter stated.

standard. In other words, if an area is meeting the NAAQS, it does not need a plan to meet the NAAQS. No additional measures are required for the area to attain the standard, since the area is already in attainment. In any event, EPA's determination of attainment is based solely on quality-assured ambient air quality monitoring. It is 40 CFR 51.918 that directs the suspension of planning requirements for the 1997 8-hour ozone standard. This suspension lasts only for so long as the area continues in attainment. Contrary to the Commenter's contention, under these circumstances there are no adverse impacts from the suspension. Moreover, this action concerns only the 1997 8-hour ozone standard, and is not relevant to the revised 8-hour ozone NAAQS of 0.075 ppm (75 ppb) that EPA promulgated on March 12, 2008. Further, EPA's determination of attainment for the bi-state Charlotte Area does not revise or remove any existing emissions limit for any NAAQS, or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS or the new NO_2 and SO_2 NAAQS. Nor does this determination revise or remove any existing emissions limit, or any existing substantive SIP provisions related to the CO NAAQS. As a result, this action does not relax any existing requirements or alter the status quo air quality.

The Commenter expresses concerns that this action ''will interfere with attaining, making reasonable further progress, and maintaining the other NAAQS through co-benefits.'' To support this claim, the Commenter mentions that transportation control measures should have the co-benefit of reduced CO and SO_2 emissions from mobile sources. EPA does not understand the concern the Commenter is expressing with regard to transportation control measures. There are no mandatory or statutory requirements for this Area to implement transportation control measures even without EPA's action to suspend the requirements to submit attainment demonstrations, associated RACM, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS.

Comment 3: The Commenter asserts that ''EPA's analysis must conclude that this proposed action would [violate] § 110(l) if finalized.'' To support this statement, the Commenter gives the example ''42 U.S.C. § 7502(a)(2)(A) & (B) provides that the attainment date for nonattainment areas 'shall be the date by which attainment can be achieved as expeditiously as practicable[.]' '' The Commenter goes on to contend that ''delaying implementing the nonattainment SIP [measures] for the 85 ppb NAAQS will delay the date by which the area can achieve the 75 ppb NAAQS, or a more protective NAAQS that EPA may promulgate.''

Response 3: EPA disagrees with the Commenter's assertion that a final determination of attainment for the bi-state Charlotte Area for the 1997 8-hour ozone NAAQS would violate section 110(l). First, as noted above, this action is not approving a SIP revision and thus section 110(l) is not applicable. Second, EPA's implementing regulation, 40 CFR 51.918, provides that as a result of the determination that the Area is attaining, the nonattainment planning measures—which are designed to bring the Area into attainment—are no longer necessary so long as the Area continues to have attaining data for the 1997 8-hour ozone NAAQS. *See* 40 CFR 51.918. These logical consequences are articulated by regulation, and EPA's determination of attainment does not make any substantive revision that could result in any change in emissions. This action does not relax any existing requirements, delay implementation of measures, or alter the status quo air quality.

Comment 4: The Commenter expresses concerns regarding the sources' compliance with RACT and control techniques guidelines (CTG), and cites to 42 U.S.C. 7502(c)(1) explaining ''that nonattainment SIPs shall provide for RACM as expeditiously as practicable.'' Specifically, the Commenter states ''[d]elay in implementing the nonattainment SIP for the 85 ppb NAAQS will interfere with the expeditious implementation of RACM for the 75 ppb NAAQS.'' The Commenter goes on to explain that ''if a source has already installed pollution controls to comply with RACT for the 85 ppb NAAQS, then the source can expeditiously comply with RACT for the 75 ppb NAAQS. However, delaying compliance with RACT for the 85 ppb NAAQS will interfere with the expeditious compliance with RACT for the 75 ppb NAAQS. This is especially true for sources that comply with RACT set forth in the Control Techniques Guidelines (CTG).''

Response 4: EPA believes that the Commenter's concerns regarding compliance of RACT and meeting the requirements for CTG are misplaced because this action does not relieve North Carolina or South Carolina of meeting these requirements for the 1997 8-hour ozone NAAQS. Both North Carolina and South Carolina have provided EPA with SIP revisions to comply with the RACT and CTG requirements for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area. (EPA is taking action on these SIP revisions in rulemakings separate from today's action. In any event, a determination of attainment does not result in the suspension of any obligation to submit 8-hour ozone RACT requirements). The Commenter's concern regarding ''expeditious compliance with RACT for the 75 ppb NAAQS,'' is misplaced. No designations have been made for the revised NAAQS, and thus no RACT requirements for that NAAQS are in place. Should the bi-state Charlotte Area (or any part thereof) be designated nonattainment for the 75 ppb ozone NAAQS or another revised NAAQS, the States will be subject to the applicable CAA requirements for that area based on the area's classification after EPA's nonattainment designation process is complete.

Comment 5: The Commenter states that:

> ''some nitrogen oxides (NO_X) emissions which should be controlled by the 85 ppb nonattainment SIP provisions will become fine particulate matter. Allowing these NO_X emission[s] will interfere with the national goal of remedying existing impairment of visibility in mandatory Class I [F]ederal areas which impairment results from manmade air pollution as set forth in 42 U.S.C. § 7491(a)(1) as well as making reasonable progress towards that goal as required by 42 U.S.C. § 7491(a)(4) and its implementing regulations.''

The Commenter goes on to state that ''[d]elay in requiring implementation of the 85 ppb nonattainment SIP provisions will also interfere with the requirement to procure, install and operate, as expeditiously as practicable best available retrofit technology as required by 42 U.S.C. § 7491(b)(2)(A) and its implementing regulations.''

Response 5: The Commenter provides no basis for their assertion that determination of attainment for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area will delay implementation of controls and thus allow NO_X emissions to interfere with ''the national goal of remedying existing impairment of visibility in mandatory Class I [F]ederal areas'' or ''the requirement to procure, install and operate, as expeditiously as practicable best available retrofit technology.'' As previously described, EPA's determination of the bi-state Charlotte Area's attainment of the 1997 8-hour ozone NAAQS does not make substantive revisions that could result in or delay required controls. Today's action, pursuant to 40 CFR 51.918 merely suspends the requirements for

the bi-state Charlotte Area to submit attainment demonstrations, associated RACM, RFP, contingency measures, and other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS (when the Area has already attained that standard). It does not, in and of itself, relax any existing requirements or alter the status quo air quality.

This action also does not relieve North Carolina and South Carolina of the requirements related to improving visibility impairment, including meeting reasonable progress goals and the consideration of best available control technology for Class I areas in North Carolina and South Carolina. Both North Carolina and South Carolina have submitted SIP revisions to address requirements related to improving visibility impairment including meeting reasonable progress goals and the consideration of best available control technology for their respective Class I areas. EPA will address these SIP submissions in a rulemaking separate from today's action.

IV. What is EPA's final action?

EPA is taking final action to determine that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS. This determination is based upon complete, quality-assured, quality-controlled, and certified ambient air monitoring data showing that the bi-state Charlotte Area has monitored attainment of the 1997 8-hour ozone NAAQS during the period 2008–2010. This final action, in accordance with 40 CFR 51.918, will suspend the requirements for the States of North Carolina and South Carolina to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs for the bi-State Charlotte Area related to attainment of the 1997 8-hour ozone NAAQS, for as long as the Area continues to meet the 1997 8-hour ozone NAAQS.

V. What are statutory and Executive Order reviews?

This action makes a determination of attainment based on air quality, and will result in the suspension of certain federal requirements, and it will not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

In addition, this 1997 8-hour ozone NAAQS determination of attainment for the bi-state Charlotte Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte Area. EPA notes that the proposal for this rule incorrectly stated that the South Carolina SIP is not approved to apply in Indian country located in the State. While this statement is generally true with regard to Indian country throughout the United States, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the SIP does apply within the Reservation. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' However, because today's action will not result in any direct effects on the Catawba, EPA's initial assessment that Executive Order 13175 does not apply remains valid.

Furthermore, EPA notes today's action also will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 2, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1779 is added to read as follows:

§ 52.1779 Control strategy: Ozone.

(a) *Determination of attaining data.* EPA has determined, as of November 15, 2011, the bi-state Charlotte-Gastonia-Rockhill, North Carolina-South Carolina

nonattainment area has attaining data for the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standards for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

(b) [Reserved]

Subpart PP—South Carolina

■ 3. Section 52.2125 is added to read as follows:

§ 52.2125 Control strategy: Ozone.

(a) *Determination of attaining data.* EPA has determined, as of November 15, 2011, the bi-state Charlotte-Gastonia-Rockhill, North Carolina-South Carolina nonattainment area has attaining data for the 1997 8-hour ozone NAAQS. This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standards for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

(b) [Reserved]

[FR Doc. 2011–29184 Filed 11–14–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03–185; Report No. 2935]

Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning the Commission's *Second Report and Order.*

DATES: Oppositions to the Petitions must be filed by November 30, 2011. Replies to an opposition must be filed December 12, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FUTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, (202) 418–2324.

SUPPLEMENTARY INFORMATION: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning the Commission's *Second Report and Order,* FCC 11–110, in MB Docket No. 03–185 and published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

This is a summary of Commission's document, Report No. 2935, released October 25, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-(800) 378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations (MB Docket No. 03–185).

Number of Petitions Filed: 7.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–29437 Filed 11–14–11; 8:45 a.m.]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3009 and 3052

[Docket No. DHS–2010–0017]

RIN 1601–AA55

Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony [HSAR Case 2009–001]; Correction

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Correcting amendment.

SUMMARY: This document corrects internal citations within the Homeland Security Acquisition Regulation to reflect previous redesignation of sections related to contracting with corporate expatriates and the recodification of certain public contracting laws in title 41, United States Code.

DATES: *Effective Date:* November 15, 2011.

FOR FURTHER INFORMATION CONTACT: Ann Van Houten, Procurement Analyst, at (202) 447–5285, for clarification of content.

SUPPLEMENTARY INFORMATION:

This document corrects internal citations within the Department of Homeland Security (DHS) Homeland Security Acquisition Regulation (HSAR) at parts 3009 and 3052 to reflect a prior redesignation of related sections and the recodification of certain public contracting laws in title 41, United States Code, by Public Law 111–350, 124 Stat. 367 (Jan. 4, 2011).

On November 16, 2009, DHS published a final rule entitled *Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony* [HSAR Case 2009–001], 74 FR 58851 (Nov. 16, 2009), implementing prohibitions related to contracting with guard services owned, controlled or operated by an individual who has been convicted of a serious felony. This final rule resulted in the resdesignation of multiple sections within the HSAR. On December 16, 2009, DHS corrected the final rule by redesignating section 3009.104–70 as section 3009.108–70, and subsections 3009.104–71 through 3009.104–75 as subsections 3009.108–7001 through 3009.108–7005. 74 FR 66584 (Dec. 16, 2009). This amendment corrects internal references within subsections 3009.108–7001, 3009.108–7004 and 3052.209–70 to reflect the previous redesignations.

The amendment also corrects the authority citation for Parts 3009 and 3052 resulting from the recodification of certain public contracting laws in title 41 by Public Law 111–350, 124 Stat. 367 (Jan. 4, 2011).

List of Subjects in 48 CFR Parts 3009 and 3052

Government procurement.

Correcting Amendments

Accordingly, 48 CFR Parts 3009 and 3052 are corrected by making the following amendments:

PART 3009—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for part 3009 is revised to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707(a) and (b), 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

■ 2. Section 3009.108–7001 is revised to read as follows:

3009.108–7001 General.

Except as provided in (HSAR) 48 CFR 3009.108–7004, DHS may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395(b), or any subsidiary of such an entity.

■ 3. Section 3009.108–7004(a) is revised to read as follows:

3009.108–7004 Waivers.

(a) The Secretary shall waive the provisions of (HSAR) 48 CFR 3009.108–7001 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

* * * * *

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for part 3052 is revised to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707(a) and (b), 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

■ 5. Section 3052.209–70 is amended by revising the introductory text and paragraph (f) of the clause to read as follows:

3052.209–70 Prohibition on contracts with corporate expatriates.

As prescribed at (HSAR) 48 CFR 3009.108–7005, insert the following clause:

* * * * *

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

__ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003;

__ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003, but it has submitted a request for waiver pursuant to 3009.108–7004, which has not been denied; or

__ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003, but it plans to submit a request for waiver pursuant to 3009.108–7004.

* * * * *

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs, Department of Homeland Security.

[FR Doc. 2011–29388 Filed 11–14–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–1997–2210]

RIN 2126–AB39

Medical Certification Requirements as Part of the Commercial Driver's License (CDL); Extension of Certificate Retention Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA amends its regulations to keep in effect until January 30, 2014, the requirement that interstate drivers subject to the commercial driver's license (CDL) regulations and the Federal physical qualification requirements must retain paper copies of their medical examiner's certificate. Interstate motor carriers are also required to retain copies of their drivers' medical certificates in their driver qualification files. This action is being taken to ensure the medical qualification of CDL holders until all States are able to post the medical self-certification and medical examiner's certificate data on the Commercial Driver's License Information System (CDLIS) driver record. This rule does not, however, extend the compliance dates for States to collect and to post to the CDLIS driver record data from a CDL holder's medical self-certification and medical examiner's certificate.

DATES: This rule is effective December 15, 2011.

ADDRESSES: You may search background documents or comments to the docket for this rule, identified by docket number FMCSA–1997–2210, by visiting the:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for reviewing documents and comments. Regulations.gov is available electronically 24 hours each day, 365 days a year; or

• *DOT Docket Management Facility (M–30):* U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

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 Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008, (73 FR 3316) or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Senior Transportation Specialist, Office of Safety Programs, Commercial Driver's License Division (MC–ESL), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–5014.

SUPPLEMENTARY INFORMATION:

Legal Basis

Medical Certification Requirements as Part of the CDL

The legal basis of the final rule titled ''Medical Certification Requirements as Part of the Commercial Driver's License,'' published on December 1, 2008, (2008 final rule) (73 FR 73096–73097), is also applicable to this rule.

Background

On December 1, 2008, FMCSA published a final rule (73 FR 73096) adopting regulations to implement section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1767, Dec. 9, 1999). Section 215 directed initiation of a rule to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses. The 2008 final rule requires any CDL holder subject to the physical qualification requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to provide a current original or copy of his or her medical examiner's certificate to the issuing State Driver Licensing Agency (SDLA). The final rule requires the SDLA to post in the CDLIS driver record the self-certification that CDL holders are required to make regarding applicability of the Federal physical qualification requirements and, for drivers subject to those requirements, the medical certification information specified in the regulations. The final

rule also implemented other conforming requirements for both SDLAs and employers (73 FR 73096–73128). These requirements, for the most part, have a compliance date of January 30, 2012. On May 21, 2010, the Agency published several technical amendments to the 2008 final rule to make certain corrections and to address certain petitions for reconsideration of that final rule (75 FR 28499–28502).

Several SDLAs have recently advised the Agency that they may not have the capability by January 30, 2012, to receive the required medical certification and medical examiner's certificate information provided by a non-excepted, interstate CDL holder, and then manually post it to the CDLIS driver record. An SDLA's inability to receive and post the required material would render both the CDL holder and his or her employer unable to demonstrate or verify, respectively, that the driver is medically certified in compliance with the FMCSRs.

The Notice of Proposed Rulemaking

On June 14, 2011, FMCSA published a notice (76 FR 34635) proposing to maintain in effect, until January 30, 2014, the requirement for an interstate CDL holder subject to the Federal physical qualification standards to carry a paper copy of his or her medical examiner's certificate. Until January 30, 2014, a CDL holder would continue to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy, as valid proof of medical certification. Also, an interstate motor carrier that employs CDL holders would continue to obtain and file a copy of the CDL holder's medical examiner's certificate in its driver qualification files, as specified at § 391.51(b)(7)(i), if the motor carrier is unable to obtain that information from the SDLA issuing the CDL due to the SDLA's inability to post the medical certificate data. In this way, the Agency could ensure the medical qualification of CDL holders until all States are able to post the medical self-certification and medical examiner's certificate data on the CDLIS driver record.

The FMCSA did not propose to change the compliance dates it established in the 2008 final rule for SDLAs. SDLAs are still expected to meet the January 30, 2012, date specified in 49 CFR 383.73 to start collecting information from CDL applicants and posting and retaining this data on the CDLIS driver record. In addition, SDLAs are expected to collect and post the same data from all existing CDL holders by the January 30, 2014, compliance date. The Agency believes that extending the requirement that both interstate CDL holders and motor carriers retain the copy of the medical examiner's certificate for 2 years, however, will provide sufficient overlap with the requirement that all SDLAs obtain the medical status and medical examiner's certificate information and post it on the driver's CDLIS driver record.

Response to Comments

Two State agencies, the Michigan Department of State and the Missouri Department of Transportation (MoDOT), submitted comments to the June 14, 2011, proposal. Both agencies support the proposal to extend certain compliance dates for interstate CDL drivers and the motor carriers that employ them. But the Michigan Department of State urged the Agency to also extend, until January 2014, the compliance dates established for States in the 2008 final rule.

The MoDOT noted that the Agency was silent regarding whether the deferred implementation date also applies to intrastate drivers and the intrastate employers. According to this commenter,

> This omission creates uncertainty and ambiguity regarding the intended scope and meaning of these requirements. When the States attempt to enforce these safety regulations against intrastate drivers and motor carriers, this kind of uncertainty and ambiguity may be susceptible to exploitation by alleged offenders or their defense attorneys, and could potentially frustrate or even to [sic] thwart the State's ability to prosecute apparent violations of these requirements by intrastate drivers and motor carriers.

FMCSA Response: The FMCSA acknowledges Michigan's concerns. However, the Agency believes it is necessary for the States to continue working towards the January 2012 deadline. This is especially the case given that Michigan provided no justification in its comment for this request. As provided in 49 CFR 384.301(d), Michigan, like all the other States issuing CDLs, will have had 3 years (from the effective date of the final rule on January 30, 2009) to comply, and most States will be in compliance. If Michigan or any other State is unable to achieve substantial compliance with the requirements of 49 CFR 384.225, as adopted in December 2008, then the compliance review standards and procedures of 49 CFR part 384, subparts C and D will be implemented. The FMCSA will continue to work with the States by providing technical assistance, as resources permit, in achieving compliance.

Regarding MoDOT's request for FMCSA to make the provisions of this final rule applicable to intrastate CDL drivers and intrastate-only motor carriers, applicable statutes provide no authority for FMCSA to do so. As explained in the preamble to the final rule, FMCSA's authority to require CDL drivers to be physically-qualified and to obtain a medical certificate is limited to drivers in interstate commerce (49 U.S.C. 31305(a)(7)). Therefore, the requirement in the 2008 final rule that CDL drivers submit their medical certificates to SDLAs only applies to drivers engaged in interstate transportation who are not excepted from the requirement to be physically qualified (73 FR 73097, 49 CFR 383.71 and 383.73). Because the 2008 final rule does not apply to intrastate-only CDL drivers in the first place, FMCSA cannot take any action regarding the need for such drivers to carry paper copies of any medical certificates and for their employers to obtain copies for their driver qualification files.

The Final Rule

The Agency adopts the proposed rule as final without any changes.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563, 76 FR 3821 (Jan. 21, 2011), or within the meaning of the Department of Transportation regulatory policies and procedures. Therefore, the Agency was not required to submit this rule to the Office of Management and Budget (OMB). The changes made in this final rule will have minimal costs and a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule extends, until January 30, 2014, the existing requirement for interstate CDL holders subject to Federal physical qualifications requirements and their employers to retain a copy of a medical examiner's certificate. Because extending the current requirement will not materially impact small entities, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $143.1 million (which is the value in 2010 of $100 million after adjusting for inflation) or more in any 1 year. The FMCSA has determined that the impact of this rulemaking will not reach this threshold.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FMCSA analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. The Agency determined that this final rule does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This final rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The FMCSA analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2008 final rule had Federalism implications, FMCSA determined that it did not create 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. Today's final rule does not change that determination in any way.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this final rule.

Paperwork Reduction Act

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

National Environmental Policy Act

The FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004, (69 FR 9680) that this final rule does not have any significant impact on the environment. In addition, the actions in this rule are categorically excluded from further analysis and documentation as per paragraph 6.b of Appendix 2 of FMCSA's Order 5610.1. The FMCSA also analyzed this final rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. This final rule is exempt from the CAA's general conformity requirement since the action results in no increase in emissions.

Executive Order 13211 (Energy Effects)

The FMCSA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 391

Motor carriers, Reporting and recordkeeping requirements, Safety.

In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, Chapter III as follows:

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

■ 2. Amend § 391.23 by revising paragraphs (m)(2) introductory text, (m)(2)(i) introductory text, and (m)(2)(ii) to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(m) * * *

(2) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2014, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

* * * * *

(ii) Until January 30, 2014, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

■ 3. Revise § 391.41(a)(2)(i) to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) * * *

(i) Beginning January 30, 2014, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

* * * * *

Issued on: October 28, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–29481 Filed 11–14–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1011

[Docket No. EP 709]

Policy Statement on Grant Stamp Procedure in Routine Director Orders

AGENCY: Surface Transportation Board, DOT.

ACTION: Statement of Board Policy.

SUMMARY: The Surface Transportation Board (STB or Board) is issuing this policy statement to inform the public that, beginning on December 15, 2011, the Board will implement a grant stamp procedure for certain decisions issued by the Director of the Office of Proceedings (Director). The grant stamp will be used for decisions in uncontested, routine procedural matters delegated to the Director when no further explanation or discussion is necessary. This procedure is designed to better serve the public, to streamline Board processes, and to remove uncertainty.

DATES: *Effective Date:* This policy statement is effective on December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm, (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

In this Policy Statement, the Board informs the public that, beginning December 15, 2011, a grant stamp procedure will be used for certain Director Orders.[1] This Policy Statement explains the limited purpose and intended use of the grant stamp.

Pursuant to 49 CFR 1011.6 and 1011.7, the STB and the Chairman of the STB have delegated to the Director authority to issue decisions addressing many routine procedural matters in proceedings before the Board. In many of these decisions, all parties to the proceeding concur in the relief sought and very little, if anything, in the way of further discussion is required by the Director. Therefore, the Director will begin using the grant stamp procedure in these routine, unopposed matters. For example, the Director could grant with a grant stamp unopposed motions for an extension of time or requests for a procedural schedule to which all parties have consented.

The procedure will be as follows: The Director will affix the grant stamp to the pleading that is filed with the Board. The stamp will be in a format similar to the sample shown in the Appendix to this decision. It will contain information such as the agency seal, the decided date, the service date, a decision identification number, and a signature line for the Director. The stamp will also have an area for any notation that needs to be made regarding the decision. The stamp will not include the docket number, as that information should already be included on the pleading. The pleading with the stamp affixed will be served as a Director Order.

The purpose of initiating a grant stamp procedure is to increase the efficiency with which the Director can issue these decisions. Use of a grant stamp would eliminate the time it takes to draft a decision and would allow for quicker responses to stakeholders, thereby removing the uncertainty that Board stakeholders might encounter as they wait for the Board to draft and serve these Director Orders. This procedure will allow for more efficient use of Board resources.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

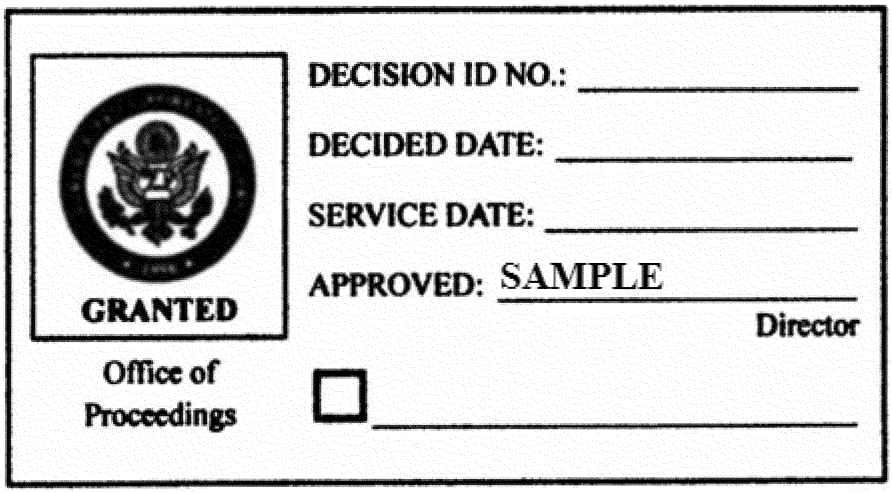
Decided: November 7, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

Appendix



[1] At this time, this policy will apply only to decisions of the Director of the Office of Proceedings, not to decisions of other Office Directors or other Board employees.

[FR Doc. 2011–29348 Filed 11–14–11; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA820

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

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

DATES: Effective November 9, 2011 through 2400 hrs, Alaska local time, December 31, 2011. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, November 25, 2011.

ADDRESSES: You may submit comments on this document, identified NOAA–NMFS–2011–0244, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0244 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

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

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

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

The 2011 initial total allowable catch (ITAC) of Pacific ocean perch in the Bering Sea subarea was established as 4,854 metric tons (mt) by the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Pacific ocean perch in the Bering Sea subarea needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 856 mt to the Pacific ocean perch ITAC in the Bering Sea subarea. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The harvest specification for the 2011 Pacific ocean perch ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 5,710 mt for Pacific ocean perch in the Bering Sea subarea.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the Pacific ocean perch fishery in the Bering Sea subarea. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2011.

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

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until November 30, 2011.

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

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

Dated: November 9, 2011.

James P. Burgess,

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

[FR Doc. 2011–29474 Filed 11–9–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 220
Tuesday, November 15, 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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Amendments Limiting Gifts From Registered Lobbyists and Lobbying Organizations; Extension of Comment Period

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 13, 2011, the Office of Government Ethics published in the **Federal Register** proposed amendments to the regulation governing standards of ethical conduct for executive branch employees of the Federal Government to impose limits on the use of gift exceptions by all employees to accept gifts from registered lobbyists and lobbying organizations, and to implement the lobbyist gift ban for appointees required to sign the Ethics Pledge prescribed by Executive Order 13490. The public comment period closes on November 14, 2011. OGE is extending the comment period to December 14, 2011.

DATES: The comment period for the proposed rule published September 13, 2011, at 76 FR 56330, is extended. Comments must be submitted in writing and be received by December 14, 2011.

ADDRESSES: You may submit written comments to OGE on the proposed rule, identified by RIN 3209–AA04, by any of the following methods:

- *Email: usoge@oge.gov.* Include the reference ''Proposed Amendments to Part 2635'' in the subject line of the message.
- *Fax:* (202) 482–9237.
- *Mail/Hand Delivery/Courier:* Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Julia L. Eirinberg, Associate General Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA04, for the proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Julia L. Eirinberg, Associate General Counsel, Office of Government Ethics; telephone: (202) 482–9300; TYY: (800) 877–8339; FAX: (202) 482–9237.

SUPPLEMENTARY INFORMATION: A copy of the original proposed rulemaking notice is available at: *http://www.gpo.gov/fdsys/pkg/FR-2011-09-13/html/2011-23311.htm*.

Approved: November 9, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2011–29569 Filed 11–14–11; 8:45 am]

BILLING CODE 6345–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG29

Small Business Size Standards: Educational Services

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for nine industries in North American Industry Classification System (NAICS) Sector 61, Educational Services. As part of its ongoing comprehensive size standards review, SBA has evaluated all size standards in NAICS Sector 61 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** that ''Size Standards Methodology'' is available on its Web site at *http://www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before January 17, 2012.

ADDRESSES: You may submit comments, identified by RIN 3245–AG29 by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov;* follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov*. You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size: average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based size standards to determine eligibility for those programs. At the beginning of SBA's comprehensive size standards review, there were 41 different size standards, covering 1,141 NAICS industries and 18

sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA conduct a review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach of reviewing a group of industries within an NAICS Sector. An NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise size standards for those industries for which currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards, which SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has developed a ''Size Standards Methodology'' for developing, reviewing and modifying size standards when necessary. SBA has published the document on its Web site at *http://www.sba.gov/size* for public review and comments and included it, as a supporting document, in the electronic docket for this proposed rule at *http://www.regulations.gov.* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all are appropriate. For example, since this proposed rule covers all industries with receipts based size standards in NAICS Sector 61, the methodology described here applies to establishing receipts based standards. However, the methodology is made available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues that it raises in its ''Size Standards Methodology,'' such as suggestions on alternative approaches to establishing and modifying size standards, whether there are alternative or additional factors that SBA should consider, whether SBA's approach to small business size standards makes sense in the current economic environment, whether SBA's use of anchor size standards is appropriate in the current economy, whether there are gaps in SBA's methodology because of the lack of comprehensive data, and whether there are other facts or issues that SBA should consider. Comments on SBA's methodology should be submitted via (1) The Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008; follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of November 15, 2011, SBA has received seven comments to its ''Size Standards Methodology.'' The comments are available to the public at *http://www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure when it establishes small business size standards, SBA considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry. This proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 61, as well as on the data and methodology it uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards: $7 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor

size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector has been 100 employees for SBA financial assistance and for most other Federal programs. However, NAICS codes for Wholesale Trade Industries (NAICS Sector 42) and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade and for all industries in Retail Trade (NAICS Sector 44–45) is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) All or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 61 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts, with the weighted average size standard for the group being $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA also evaluates, as an additional primary factor, the impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. In addition, SBA considers and evaluates other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance and other program factors, *etc.*). The SBA also considers impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 61 being reviewed in this proposed rule. A more detailed description of this analysis is provided in SBA ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: Simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally, regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the total sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will

support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or significantly lower than those of the anchor comparison group is likely to have lower startup costs; this in turn will support adoption of the anchor size standard, or in rare cases, one lower than the anchor.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this indicates that small businesses are competitive in that industry. This supports adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This will support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on SBA's Web site at *http://www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group this may, all else being equal, warrant a higher size standard than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and the industry-wide small business share may have a variety of causes, such as extensive administrative and compliance requirements associated with Federal contracts, different skill set requirements for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the Federal contracting small business share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal procurement trends in the size standards analysis only if (1) The small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts and (2) total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect a significant level of contracting where a revision to a size standard may have an impact on expanding small business opportunities.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard on SBA's loan programs. For this, SBA examines the volume of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards have impeded financial assistance to small businesses, higher size standards are supportable. However, if under current size standards small businesses have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standard, this factor is not considered for determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data for most industries covered by this proposed rule was a special tabulation of the data from 2007 Economic Census (*see http://www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The three industries, namely NAICS 611110, NAICS 611210, and NAICS 611310, are not covered by the Economic Census. The data for these industries were based on the 2007 County Business Patterns (*see http://www.census.gov/econ/cbp/*). The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by NAICS Sector (2-digit level), Subsector (3-digit level), Industry Group (4-digit level), Industry (6-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by receipts and employment size.

In some cases, where data were not available due to disclosure prohibitions, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit

(Subsector), or 4-digit (Industry Group) level. In some instances, SBA analysis was based only on those factors for which data were available or estimates of missing values were possible.

The data from the Census Bureau's tabulation are limited to the 6-digit NAICS industry level and hence do not provide economic characteristics at the sub-industry level. Thus, when establishing, reviewing, or modifying size standards at the sub-industry level (that is, one of the ''exceptions'' in SBA's table of size standards), SBA evaluates the data from the U.S. General Service Administration's (GSA) Federal Procurement Data System—Next Generation (FPDS–NG) and Central Contractor Registration (CCR) databases following a two-step procedure. First, using FPDS–NG, SBA identifies product service codes (PSCs) that correspond to specific sub-industry activities or ''exceptions'' and then identifies firms that are active in Federal contracting involving those PSCs. Then, SBA obtains those firms' revenue and employment data from the CCR database. SBA uses that data to evaluate the actual size of businesses that FPDS–NG identifies for those procurements. In this proposed rule, SBA applied this approach to determine industry and Federal contracting factors for ''Job Corps Centers,'' which is an exception under NAICS 611519, Other Technical and Trade Schools.

To calculate average assets, SBA used total sales to total assets ratios from the Risk Management Association's Annual Statement Studies from years 2007 to 2009.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2007 to 2009. The data are available from the GSA's FPDS–NG database.

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008 to 2010.

Data sources and estimation procedures that SBA uses in its size standards analysis are documented in detail in the SBA's ''Size Standards Methodology'' White Paper, which is available at *http://www.sba.gov/size*.

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) Independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business size definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 61. All size standards in NAICS Sector 61 are based on annual receipts. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. To establish these eight receipts based size standard levels SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following: $2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million will include those industries that at the start of the comprehensive size standards review had the lowest receipts based standards, which ranged from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels, namely: $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between some of the fixed levels, SBA also established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

Evaluation of Industry Structure

SBA evaluated the structure of each of the 17 industries and one sub-industry in NAICS Sector 61, Educational Services, to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry in NAICS Sector 61 to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be selected. The level of the new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison

group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), average assets size, the four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Average firm size ($ million)		Average assets size ($ million)	Four-firm concentration ratio (%)*	Average receipts of four largest firms ($ million)*	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

*To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7 million anchor size standard appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally warrant a size standard for that industry above or below the $7 million anchor. The level of the new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that would support a $19 million size standard. The $3.3 million level is 52.8 percent between the average firm size of $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7 million to estimate a size standard of $18.62 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.62 million). The final step is to round the estimated $18.62 million size standard to the nearest fixed size standard, which in this example is $19 million. SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology,'' which is available on its Web site at *http://www.sba.gov/size*. (However, it should be noted that the figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple average receipts size is ($ million)	*Or if* weighted average receipts size is ($ million)	*Or if* average assets size is ($ million)	*Or if* average receipts of largest four firms is ($ million)	*Or if* Gini coefficient is	*Then* size standard is ($ million)
< 1.15	< 15.22	< 0.73	< 142.8	< 0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
> 5.71	> 133.41	> 3.61	> 1,577.1	> 0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are in getting Federal contracts under existing size standards. For the current comprehensive size standards review, for industries where the small business share of total Federal contracting dollars is between 10 and 30 percent lower than their shares in total industry receipts, SBA has designated a size standard at one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than their shares in total industry receipts, SBA has designated a size standard at two levels higher than the current size standard.

Because of the complex relationships among a number of variables affecting small business participation in the

Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may enable SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 17 industries reviewed in this proposed rule, seven industries averaged $100 million or more annually in Federal contracting during fiscal years 2007 to 2009. Also, a review of Federal contracts awarded to the sub-industry Job Corps Centers during fiscal year 2009 indicates that the sub-industry received more than $100 million in Federal contracts as well. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and the small business share of Federal contracting dollars was 10 percentage points or more) in three of those seven industries and a separate size standard was derived for that factor for each of them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column, and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no size standard estimated for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard ($ million)	(10) Current size standard ($ million)
611110—Elementary and Secondary Schools	$3.3	$14.7		1.7	$259.3	0.668		$10.0	$7.0
	19.0	5.0				$5.0			
611210—Junior Colleges	14.9	62.0		25.4	443.4	0.735		19.0	7.0
	35.5	19.0				$14.0			
611310—Colleges, Universities and Professional Schools	67.5	324.3		9.6	3,959.4	0.779	0.8	25.5	7.0
	35.5	35.5				$19.0			
611410—Business and Secretarial Schools	1.3	6.2		19.8	20.2	0.668		7.0	7.0
	7.0	5.0				$5.0			
611420—Computer Training	1.2	11.3		17.0	104.5	0.741	23.3	10.0	7.0
	7.0	5.0				$14.0			
611430—Professional and Management Development Training	1.3	12.8	0.9	9.9	178.2	0.739	−17.7	10.0	7.0
	7.0	5.0	7.0			$14.0	$10.0		
611511—Cosmetology and Barber Schools	0.8	6.4		11.7	35.0	0.546		5.0	7.0
	5.0	5.0				$5.0			
611512—Flight Training	2.6	56.9		52.0	282.0	0.836	−17.3	19.0	25.5
	14.0	14.0			10.0	$30.0	$30.0		
611513—Apprenticeship Training	1.0	5.7		10.2	31.9	0.612		5.0	7.0
	5.0	5.0				$5.0			
611519—Other Technical and Trade Schools	1.8	19.4	1.2	17.8	267.4	0.778	−13.8	14.0	7.0
	10.0	7.0	10.0			$19.0	$10.0		
Except—Job Corps Centers	585.8	1,907.3		94.0	2,891.2	0.690	20.0	30.0	35.5
	35.5	35.5			35.5	$7.0			
611610—Fine Arts Schools	0.3	1.7	0.1	3.2	26.3	0.325		5.0	7.0
	5.0	5.0	5.0			$5.0			
611620—Sports and Recreation Instruction	0.3	1.5		4.0	36.8	0.327		5.0	7.0
	5.0	5.0				$5.0			
611630—Language Schools	0.7	52.8		31.1	66.7	0.704		10.0	7.0
	5.0	14.0				$10.0			
611691—Exam Preparation and Tutoring	0.6	43.9		29.5	259.1	0.642		7.0	7.0
	5.0	14.0				$5.0			
611692—Automobile Driving Schools	0.3	2.2		8.6	13.8	0.370		5.0	7.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued
[Millions of dollars]

(1) NAICS code/ NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard ($ million)	(10) Current size standard ($ million)
	5.0	5.0	.....	.....	.....	$5.0	.....	.....	.....
611699—All Other Miscellaneous Schools and Instruction	1.0	21.5	0.7	27.1	242.4	0.758	3.2	10.0	7.0
	5.0	7.0	7.0	.....	.....	$19.0	.....	.....	.....
611710—Educational Support Services	1.5	39.2	1.2	21.2	467.1	0.811	−5.1	14.0	7.0
	7.0	10.0	10.0	.....	.....	$25.5	.....	.....	.....

Special Considerations

Job Corps Centers

The current size standard for Federal contracts for Job Corps Centers (''exception'' to NAICS code 611519) is $35.5 million in average annual receipts. For Federal procurement programs, this size standard applies to Federal contracts that meet specific criteria. The criteria that constitute a Jobs Corps Center contract or company are detailed in Footnote 16 to SBA's table of size standards (13 CFR 121.201): ''For classifying a Federal Procurement, the purpose of the solicitation must be for the management and operation of a U.S. Department of Labor Job Corps Centers. The activities involved include admissions activities, life skills training, educational activities, comprehensive career preparation activities, career development activities, career transition activities, as well as the management and support functions and services needed to operate and maintain the facility. For SBA assistance as a small business concern, other than for Federal Government procurements, a concern must be primarily engaged in providing the services to operate and maintain Federal Job Corps Centers.''

To determine if the current $35.5 million size standard is appropriate, SBA evaluated average firm size, market concentration, and size distribution of firms involved in the Job Corps Centers sub-industry using the data from FPDS–NG and CCR and the procedure described under the section of this rule entitled ''Sources of Industry and Program Data.'' Based on the data for fiscal year 2009, Federal contracts averaged more than $100 million annually, but the small business share of Federal contracting dollars was larger than the small business share of total receipts. Therefore, the Federal contracting factor was not important for the evaluation of this sub-industry. The results, as shown in Table 3, support decreasing the current size standard to $30 million. However, for reasons discussed below, SBA has proposed to retain the $35.5 million size standard.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008 to 2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed, the data show that it is mostly businesses much smaller than the current size standards that utilize SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 61, Educational Services, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 4 (below) summarizes the results of SBA analyses of industry and federal procurement factors from Table 3. The results support increases in size standards for nine industries, decreases for six industries and one sub-industry (exception to NAICS 611519, Job Corps Centers), and no changes for two industries.

However, lowering small business size standards is not in the best interests of small businesses under the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate was 9.4 percent or higher from May 2009 to December 2010. It somewhat moderated to 8.8 percent in March 2011, but it has been 9 percent or higher for the May-July quarter. The unemployment rate is forecast to remain at around 9 percent through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business that strengthens small businesses' ability to compete for contracts and creates a better playing field for small businesses; building on the President's National Export Initiative, promotes small business exporting; expands training and counseling for small businesses; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

Reducing the size standard for Job Corps Centers (the exception to NAICS 511619) would result in significant jobs losses in that industry, and it would adversely affect those unemployed and underemployed people that Job Corps Centers serve. This is another reason why SBA is not lowering the size standard for this industry.

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS code	NAICS industry title	Calculated size standard ($ million)	Current size standard ($ million)
611110	Elementary and Secondary Schools	$10.0	$7.0
611210	Junior Colleges	19.0	7.0
611310	Colleges, Universities and Professional Schools	25.5	7.0
611410	Business and Secretarial Schools	7.0	7.0
611420	Computer Training	10.0	7.0
611430	Professional and Management Development Training	10.0	7.0
611511	Cosmetology and Barber Schools	5.0	7.0
611512	Flight Training	19.0	25.5
611513	Apprenticeship Training	5.0	7.0
611519	Other Technical and Trade Schools	14.0	7.0
Except	Job Corps Centers	30.0	35.5
611610	Fine Arts Schools	5.0	7.0
611620	Sports and Recreation Instruction	5.0	7.0
611630	Language Schools	10.0	7.0
611691	Exam Preparation and Tutoring	7.0	7.0
611692	Automobile Driving Schools	5.0	7.0
611699	All Other Miscellaneous Schools and Instruction	10.0	7.0
611710	Educational Support Services	14.0	7.0

Further, lowering size standards would decrease the number of firms that could participate in Federal financial and procurement assistance for small businesses. Size standards based solely on analytical results without any other considerations would cut off currently eligible small firms from those programs. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal assistance, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not propose to reduce size standards for any industries. For six industries and one sub-industry for which analyses might support lowering size standards, SBA proposes to retain the current size standards. SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and Jobs Act. Therefore, for those industries for which its analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Thus, of the 17 industries and one sub-industry in NAICS Sector 61 that SBA reviewed in this proposed rule, the Agency proposes to increase size standards for nine industries and retain the current standards for eight industries and one sub-industry. Industries for which SBA has proposed to increase their size standards and proposed standards are in Table 5 (below).

In addition, not lowering size standards in NAICS Sector 61 is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services), which the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency' recently proposed rules for NAICS Sector 54, Professional, Technical, and Scientific Services (76 FR 14323, March 16, 2011), NAICS Sector 48–49, Transportation and Warehousing (76 FR 27935, May 13, 2011), NAICS Sector 51, Information (*See* 76 FR 63216, October 12, 2011), and NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (*See* 76 FR 63510, October 12, 2011). In each of those final and proposed rules, SBA opted not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS code	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
611110	Elementary and Secondary Schools	$10.0	$7.0
611210	Junior Colleges	19.0	7.0
611310	Colleges, Universities and Professional Schools	25.5	7.0
611420	Computer Training	10.0	7.0
611430	Professional and Management Development Training	10.0	7.0
611519	Other Technical and Trade Schools	14.0	7.0
611630	Language Schools	10.0	7.0
611699	All Other Miscellaneous Schools and Instruction	10.0	7.0
611710	Educational Support Services	14.0	7.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 61, Educational Services, for which it has proposed to increase size standards, no firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.1 percent to 1.7 percent, with an average of 0.5 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on its industry.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues.

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether an employee based standard for certain industries is a more suitable measure of size and what that employee level should be.

3. SBA's proposed size standards are based on its evaluation of five primary factors: Average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and the level and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider for assessing industry characteristics when evaluating or revising size standards. SBA also seeks information on relevant data sources, if available.

4. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

5. For some industries, based on its analysis of industry and program data, SBA proposes to increase the existing size standards by a large amount (such as NAICS 611210, NAICS 611310, NAICS 611519, and NAICS 611710) while for others the proposed increases are modest. SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

6. In this proposed rule, SBA applied its size standard methodology to review the size standard for Job Corps Centers, which is an exception to NAICS 611519, using data on employment and receipts from CCR. SBA welcomes any comments on this source of data and suggestions on alternative data sources.

7. To simplify size standards, SBA has established or proposed common size standards for closely related industries in other NAICS Sectors. Within NAICS Sector 61, all industries, with the exceptions of Job Corps Centers (exception to NAICS 611519, Other Technical and Trade Schools) and NAICS 611512, Flight Training, currently have a common $7.0 million size standard. Based on SBA's analysis of the industry data, too much variation exists among the industries in Sector 61 to retain the current common size standard or propose a different common size standard for most industries. Therefore, SBA has proposed size standards based on an analysis of each specific industry. SBA welcomes comments on whether it should adopt common size standards for all or a particular group of industries, and if so, how are those industries related in a way that requires a common size standard.

8. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values as it used in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a ''major rule,'' however, under the Congressional Review Act (5 U.S.C. 800).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the proposed size standards for a number of industries in NAICS Sector 61, Educational Services, will better reflect the economic characteristics of small businesses and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The **SUPPLEMENTARY INFORMATION** section of this proposed rule explains SBA's methodology for

analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement provides targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZones), women-owned small businesses (WOSBs), and service-disabled veteran-owned small business concerns (SDVO SBCs). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In nine industries for which SBA has proposed increasing size standards, SBA estimates that about 1,500 additional firms will obtain small business status and become eligible for these programs. That represents 2.1 percent of the total number of firms that are classified as small under the current standards in all industries within NAICS Sector 61. If adopted as proposed, this will increase the small business share of total industry receipts in those industries from about 18 percent under the current size standards to nearly 23 percent.

Three groups will benefit from these proposed size standards if they are adopted in final form as proposed, namely: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby being able to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby being able to continue their participation in the programs; and (3) Federal agencies that need larger pools of small businesses from which to draw for their small business procurement programs will have access to them.

During fiscal years 2007 to 2009, 88 percent of Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the nine industries for which SBA has proposed to increase size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could potentially obtain Federal contracts totaling up to $20 million to $25 million per year under SBA's small business, 8(a), HUBZone, WOSB, and SDVO SBC programs and other unrestricted procurements. The added competition for many of these procurements could also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008 to 2010 data, SBA estimates that around 16 to 20 additional loans totaling about $3 million to $4 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in an increase in small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly the extent of their number and the total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it similarly difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. However, since the benefit under this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that 1,500 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. In addition, there could be more firms seeking SBA guaranteed loans, more firms eligible for enrollment in the CCR's Dynamic Small Business Search database and more firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result if more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. The additional costs associated with fewer bidders, however, are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standards, if adopted, may have distributional effects among large and small businesses. Although SBA cannot estimate the actual outcome of the gains and losses among small and large businesses with certainty, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone firms instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS–NG data only identify the

size of businesses receiving Federal contracts as ''small businesses'' or ''other than small businesses'' without providing the exact size of the businesses.

The proposed revisions to the existing size standards for NAICS Sector 61, Educational Services, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to the small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act Tours. The presentation included information on the status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback regarding the size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of NAICS Sector 61, Educational Services, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. SBA's last comprehensive review of size standards was during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice reforms, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this proposed rule will not have 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. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in NAICS Sector 61, Educational Services. As described above, this rule may affect small entities seeking Federal contracts, loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Most of the size standards in NAICS Sector 61, Educational Services, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in the Sector. Such changes can be sufficient to support a revision to size standards for some industries. Based on the analysis of the latest data available, SBA believes that the proposed size standards in this rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The newly enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 1,500 additional firms will become small because of increases in size standards in nine industries. That represents about 2.1 percent of total firms that are small under current size standards in all industries within NAICS Sector 61. This will result in an increase in the small business share of total industry receipts for this Sector

from about 18 percent under the current size standard to nearly 23 percent under the proposed standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, recordkeeping and other compliance requirements of the rule and an estimate of the classes of small entities, which will be subject to the requirements?

Proposed size standards changes do not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the CCR database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters eligibility for SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). Additionally, the Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. Revise the authority citation for part 121 to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''611110,'' ''611210,'' ''611310,'' ''611420,'' ''611430,'' ''611519,'' ''611630,'' ''611699,'' and ''611710,'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * * *	*	
611110	Elementary and Secondary Schools	$10.0	
611210	Junior Colleges	19.0	
611310	Colleges, Universities and Professional Schools	25.5	
*	* * * * * *	*	
611420	Computer Training	10.0	
611430	Professional and Management Development Training	10.0	
*	* * * * * *	*	
611519	Other Technical and Trade Schools	14.0	
*	* * * * * *	*	
611630	Language Schools	10.0	
*	* * * * * *	*	
611699	All Other Miscellaneous Schools and Instruction	10.0	
611710	Educational Support Services	14.0	

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * * * *			

Dated: September 9, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–29445 Filed 11–14–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG28

Small Business Size Standards: Real Estate and Rental and Leasing

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 20 industries and one sub-industry in North American Industry Classification System (NAICS) Sector 53, Real Estate and Rental and Leasing. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all size standards in NAICS Sector 53 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published in the October 21, 2009 issue of the **Federal Register**. That ''Size Standards Methodology'' is available on its Web site at *http://www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before January 17, 2012.

ADDRESSES: You may submit comments, identified by RIN 3245–AG28, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov;* follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* you must submit such information to: U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also reviews the effect of inflation on its standards and makes necessary adjustments to its monetary based size standards at least once every five years. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA conduct a review of all size standards no less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach of reviewing a group of industries within a NAICS Sector. A NAICS Sector generally

consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more. Once SBA completes its review of size standards for industries in a NAICS Sector, it will issue a proposed rule to revise size standards for those industries for which currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA has published the document on its Web site at *http://www.sba.gov/size* for public review and comments and included it as a supporting document in the electronic docket of this proposed rule at *http://www.regulations.gov.* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all are appropriate. For example, since all industries in NAICS Sector 53 have receipts based size standards, the methodology described in this proposed rule applies to establishing receipts based size standards. However, the methodology is made available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues that it raises in its ''Size Standards Methodology,'' such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's using anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider. Comments on SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008; follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of November 15, 2011, SBA has received seven comments to its ''Size Standards Methodology.'' The comments are available to the public at http://www.regulations.gov. SBA continues to welcome comments on its methodology from interested parties.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure when it establishes small business size standards, SBA considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies; suggestions from industry groups and Federal agencies; and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria the Agency used to propose any adjustments to size standards in NAICS Sector 53. It also explains why SBA has proposed to adjust some size standards in NAICS Sector 53 but not others. This proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 53, as well as on the data and methodology it uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector has been 100 employees for SBA financial assistance and for most other Federal programs. However, NAICS codes for Wholesale Trade Industries (NAICS Sector 42) and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade and for all industries in Retail Trade (NAICS Sector 44–45) is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries

with one of the three anchor size standards (referred to as ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 53 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. The size standards for this group of industries range from $23 million to $35.5 million in average receipts, with the weighted average size standard for the group being $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA also evaluates, as an additional primary factor, the impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance and other program factors, *etc.*). SBA also considers the potential impact of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 53 being reviewed in this proposed rule. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor standard. In lieu of actual startup cost data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or significantly lower than those of the anchor comparison group is likely to have lower startup costs; this in turn will support the anchor standard, or in rare cases, one lower than the anchor may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine

the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *http://www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group this may, all else being equal, warrant a higher size standard than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and the industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal contracting trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on expanding contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard on SBA's loan programs. For this, SBA examines the volume and number of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards have impeded financial assistance to small businesses, higher size standards are supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standard, this factor is not considered for determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the data from 2007 Economic Census (*see http://www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by NAICS Sector (2-digit level), Subsector (3-digit level), Industry Group (4-digit level), Industry (6-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts, and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector) or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

The data from the Census Bureau's tabulation are limited to the 6-digit NAICS industry level and hence do not provide economic characteristics at the sub-industry level. Thus, when establishing, reviewing, or modifying size standards at the sub-industry level (that is, one of the ''exceptions'' in SBA's table of size standards), SBA evaluates the data from the U.S. General Service Administration's (GSA) Federal Procurement Data System—Next Generation (FPDS–NG) and the Central Contractor Registration (CCR) following a two-step procedure. First, using FPDS–NG, SBA identifies product service codes (PSCs) that correspond to specific sub-industry activities or ''exceptions'' and then identifies firms that are active in Federal contracting involving those PSCs. Then, SBA obtains those firms' revenue and employment data from the CCR database. SBA uses that data to evaluate the actual size of businesses that FPDS–NG identifies for those procurements. In this proposed rule, SBA applied this approach to evaluate industry and Federal contracting factors for ''Leasing of Building Space to Federal Government by Owners,'' which is an exception under NAICS 531190, Lessors of Other Real Estate Property.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2007–2009. The data are available from GSA's FPDS–NG.

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Data sources and estimation procedures that SBA uses in its size standards analysis are documented in detail in SBA's ''Size Standards Methodology'' White Paper, which is available at *http://www.sba.gov/size.*

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation,

and (3) within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130, March 4, 2004) and 57 FR 62515, December 31, 1992). At the beginning of SBA's comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

SBA proposes, therefore, to apply one of eight receipts based size standards to each industry and sub-industry in NAICS Sector 53. In NAICS Sector 53, all size standards are based on annual receipts. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. To establish these eight receipts based size standard levels, SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following—$2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the size standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million will include those industries with the currently lowest receipts based standards, which range from $2 million to $4.5 million. Among the higher level size clusters, SBA has set four fixed levels, namely $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels represent roughly the same proportional differences as in the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a specific size standard level for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among closely related industries more consistent than separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, and NAICS 541519), even though the industry data might support a distinct size standard for each industry (*see* 57 FR 27906, June 23, 1992). Within NAICS Sector 53, all industries in NAICS Industry Group 5313, Activities Related to Real Estate; all industries in NAICS Industry Group 5321, Automotive Equipment Rental and Leasing; and all industries in NAICS Industry Group 5322, Consumer Goods Rental, have common size standards of $2 million, $25.5 million, and $7 million, respectively. In this rule, except for NAICS 5322, SBA proposes to retain common size standards for those industries and establish common size standards for similar industries in other NAICS Industry Groups as well. Whenever SBA proposes a common size standard for closely related industries it will provide its justification.

Evaluation of Industry Structure

SBA evaluated the structure of the 24 industries and one sub-industry in NAICS Sector 53, Real Estate and Rental and Leasing, to assess the appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry and sub-industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with a $7 million size standard and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The level of the new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), average assets size, the four-firm concentration

ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. firm size ($ million)		Avgerage assets Size ($ million)	Four-firm concentration ratio (%)	Average receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7 million anchor size standard appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally warrant a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.3 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7 million to estimate a size standard of $18.62 million ([{$29 million − $7 million} * 0.528] + $7 million = $18.62 million). The final step is to round the estimated $18.62 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology,'' which is available at *http://www.sba.gov/size.* (However, it should be noted that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available.) Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple average receipts size ($ million)	*Or if* weighted average receipts size ($ million)	*Or if* average assets size ($ million)	*Or if* average receipts of largest four firms ($ million)	*Or if* Gini coefficient	*Then* size standard is ($ million)
< 1.15	< 15.22	< 0.73	< 142.8	< 0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
> 5.71	> 133.41	> 3.61	> 1,577.1	> 0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are in getting Federal contracts under existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than their share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than their share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may enable SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in the size standard analysis and suggestions for

alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 24 industries and one sub-industry in NAICS Sector 53 reviewed in this proposed rule, seven industries averaged $100 million or more annually in Federal contracting during fiscal years 2007–2009. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more) in three of those seven industries and a separate size standard was derived for that factor for each of them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, no size standard is estimated for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

(1) NAICS code/NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard ($ million)	(10) Current size standard ($ million)
531110—Lessors of Residential Buildings and Dwellings	$1.3	$32.2	$6.6	11.0	$1,851.5	0.713	22.8	.....	.....
	7.0	10.0	35.5	.....	.....	$10.0	.....	$19.0	$7.0
531120—Lessors of Nonresidential Buildings (except Miniwarehouses)	3.3	80.7	16.5	14.3	3,600.4	0.861	30.7	.....	.....
	19.0	19.0	35.5	.....	.....	$35.5	.....	30.0	7.0
531130—Lessors of Miniwarehouses and Self Storage Units	0.7	24.8	3.5	34.4	562.6	0.584	.....	.....	.....
	5.0	7.0	30.0	.....	.....	$5.0	.....	14.0	25.5
531190—Lessors of Other Real Estate Property	0.7	7.3	3.7	15.0	228.4	0.563	−19.6	.....	.....
	5.0	5.0	35.5	.....	.....	$5.0	$10.0	14.0	7.0
Except Leasing of Building Space to Federal Government by Owners	144.6	2,930.8	.....	83.0	12,603.0	0.950	.....	.....	.....
	35.5	35.5	.....	.....	35.5	$35.5	.....	35.5	20.5
531210—Offices of Real Estate Agents and Brokers	0.8	35.0	0.6	11.3	2,388.9	0.711	−29.6	.....	.....
	5.0	10.0	5.0	.....	.....	$10.0	$7.0	7.0	2.0
531311—Residential Property Managers	1.0	14.5	1.6	6.8	.....	0.701	.....	.....	.....
	5.0	5.0	14.0	.....	483.9	$7.0	.....	10.0	2.0
531312—Nonresidential Property Managers	1.1	7.9	5.3	6.7	266.3	0.682	.....	.....	.....
	5.0	5.0	35.5	.....	.....	$5.0	.....	14.0	2.0
531320—Offices of Real Estate Appraisers	0.3	3.8	.....	7.8	96.6	0.397	.....	.....	.....
	5.0	5.0	.....	.....	.....	$5.0	.....	5.0	2.0
531390—Other Activities Related to Real Estate	1.0	32.4	3.1	26.0	1,049.2	0.768	.....	.....	.....
	5.0	10	25.5	.....	.....	$19.0	.....	19.0	2.0
532111—Passenger Car Rental	11.3	922.8	15.4	82.0	4,877.9	0.963	.....	.....	.....
	35.5	35.5	35.5	.....	35.5	$35.5	.....	35.5	25.5
532112—Passenger Car Leasing	10.1	153.7	21.7	63.6	864.5	0.844	.....	.....	.....
	35.5	35.5	35.5	.....	19.0	$35.5	.....	30.0	25.5
532120—Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	7.4	116.8	9.6	54.7	2,548.3	0.895	.....	.....	.....
	35.5	30.0	35.5	.....	35.5	$35.5	.....	35.5	25.5
532210—Consumer Electronics and Appliances Rental	5.2	468.7	3.2	.....	.....	0.904	.....	.....	.....
	30.0	35.5	30.0	.....	.....	$35.5	.....	35.5	7.0
532220—Formal Wear and Costume Rental	1.0	141.4	.....	.....	.....	0.750	.....	.....	.....
	5.0	35.5	.....	.....	.....	$14.0	.....	19.0	7.0
532230—Video Tape and Disc Rental	1.9	659.7	0.9	77.4	1,791.4	0.896	.....	.....	.....
	10.0	35.5	7.0	.....	35.5	$35.5	.....	25.5	7.0

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued

[Millions of dollars]

(1) NAICS code/NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard ($ million)	(10) Current size standard ($ million)
532291—Home Health Equipment Rental	7.0	106.0	4.1	66.6	978.1	0.863			
	35.5	25.5	35.5		19.0	$35.5		30.0	7.0
532292—Recreational Goods Rental	0.4	1.5		7.0	12.0	0.410			
	5.0	5.0				$5.0		5.0	7.0
532299—All Other Consumer Goods Rental	1.3	13.7	0.8	16.5	155.0	0.664			
	7.0	5.0	7.0			$5.0		7.0	7.0
532310—General Rental Centers	1.4	48.7	1.0	36.8	390.7	0.672			
	7.0	14.0	7.0			$5.0		7.0	7.0
532411—Commercial, Air, Rail, and Water, Transportation Equipment and Rental	14.0	147.4	23.3	69.2	1,567.5	0.866	37.9		
	35.5	35.5	35.5		30.0	$35.5		35.5	7.0
532412—Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	6.6	76.7	7.1	41.8	1,782.1	0.846			
	35.5	19.0	35.5		35.5	$30.0		30.0	7.0
532420—Office Machinery and Equipment Rental and Leasing	3.5	21.3	5.5	30.6	163.6	0.784	−23.3		
	19.0	7.0	35.5			$19.0	$30.0	25.5	25.5
532490—Other Commercial, and Industrial Machinery and Equipment Rental and Leasing	4.2	51.7	4.5	22.7	1,101.6	0.826	−4.3		
	25.5	14.0	35.5			$30.0		30.0	7.0
5333110—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	14.2	118.6	17.0	33.5	2,757.2	0.862			
	35.5	30.0	35.5			$35.5		35.5	7.0

Common Size Standards

When many of the same businesses operate in multiple industries, SBA believes that a common size standard can be appropriate for these industries even if the industry and relevant program data may support different size standards. For instance, in past rules, SBA has established a common size standard for Computer Systems Design and Related Services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the ''exception''), and NAICS 811212). Another example is the common size standard for certain Architectural, Engineering and Related Services (NAICS 541310, NAICS 541330 (excluding the ''exceptions''), Map Drafting which is identified as ''exception'' under NAICS 541340, NAICS 541360, and NAICS 541370 (*see* 64 FR 28275, May 25, 1999). More recently, SBA established a common size standard for some of the industries in NAICS Sector 44–45, Retail Trade, as well (*see* 75 FR 61597, October 6, 2010). Similarly, SBA proposed common size standards for several other industries in NAICS Sector 54, Professional, Scientific and Technical Services (*see* 76 FAR 14323, March 16, 2011), NAICS Sector 48–49, Transportation and Warehousing (*see* 76 FAR 27935, May 13, 2011), and NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (*see* 76 FR 63510, October 12, 2011).

In this rule, SBA proposes, as an alternative to a separate size standard for each industry, common size standards for industries under several NAICS Industry Groups as shown in Table 4. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Industry Group using the same method as described above. The results are in Table 5, which immediately follows Table 4, below. For two closely related NAICS Industry Groups, Real Estate Agents and Brokers (NAICS 5312) and Activities Related to Real Estate (NAICS 5313), SBA is also proposing to continue with a common size standard. The industries in these two Industry Groups were one industry under the former Standard Industrial Classification System. With the establishment of the NAICS in 1997, five industries were created for the various real estate related activities (*see* 62 FR 17288, April 9, 1997). Firms in these two NAICS Industry Groups, however, often engage in related real estate activities of both Industry Groups, such as property sales, property rental, property management services, real estate consulting, real estate appraisal and relocations services. In consideration of the similar activities of firms within NAICS 5312 and NAICS 5312, and SBA's historical application of a common size standard for them, SBA has combined the data for the two NAICS Industry Groups in evaluating an appropriate size standard.

TABLE 4—INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Industry group: NAICS codes	Industry group titles	Industries: 6-digit NAICS codes
5311	Lessors of Real Estate	531110, 531120, 531130, 531190.

TABLE 4—INDUSTRY GROUPS FOR COMMON SIZE STANDARDS—Continued

Industry group: NAICS codes	Industry group titles	Industries: 6-digit NAICS codes
5312 & 5313	Real Estate Agents and Brokers, and Activities Related to Real Estate.	531210, 531311, 531312, 531320, 531390.
5321	Automotive Equipment Rental and Leasing	532111, 532112, 532120.
5324	Commercial and Industrial Machinery and Equipment Rental and Leasing.	532411, 532412, 532420, 532490.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY GROUP

[Millions of dollars]

(1) NAICS code/Industry title	(2) Simple average firm size	(3) Weighted average firm size	(4) Average assets size	(5) Four-firm ratio (%)	(6) Four-firm average size	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard
5311—Lessors of Real Estate	$1.8	$61.0	$9.2	8.1	$3,643.3	0.795	19.3	$25.5
	10.0	14.0	35.5			$25.5		
5312 & 5313—Real Estate Agents and Brokers Activities, and Related to Real Estate	0.9	23.4	0.8			0.707	−13.4	7.0
	5.0	7.0	7.0			10.0	5.0	
5321—Automotive Equipment Rental and Leasing	9.4	276.7	13.2	47.4	5,335.8	0.931	20.8	35.5
	35.5	35.5	35.5		35.5	35.5		
5324—Commercial and Industrial Machinery and Equipment Rental and Leasing	5.6	75.8	6.6	22.8	2,724.2	0.854	8.9	30.0
	30.0	19.0	35.5			35.5		

Special Considerations

Leasing of Building Space to Federal Government by Owners

The current size standard for Federal contracts for Leasing of Building Space to Federal Government by Owners (''exception'' to NAICS 531190) is $20.5 million. This size standard applies only to certain Federal contracting opportunities that meet specific criteria. Footnote 9 of SBA's table of size standards (13 CFR 121.201) reads: ''For Government procurement, a size standard of $20.5 million in gross receipts applies to the owners of building space leased to the Federal Government. This size standard does not apply to an agent.''

To determine if the current $20.5 million size standard is appropriate, SBA evaluated average firm size, market concentration, and size distribution of firms involved in Leasing of Building Space to Federal Government by Owners. SBA used data from FPDS–NG and CCR and followed the procedure described under the section ''Sources of Industry and Program Data'' (above). Based on the data for fiscal years 2007–2009, Federal contracts averaged less than $100 million annually. Therefore, the Federal contracting factor was not an important factor for evaluating this sub-industry. The results, as shown in Table 3, support increasing the current size standard to $35.5 million.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the size standards that utilize SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 53, Real Estate and Rental and Leasing, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 6, below, summarizes the results of SBA's analyses of industry specific size standards from Table 3 and the results for common size standards from Table 5. In terms of industry-specific size standards, the results in Table 3 support increases in size standards for 19 industries and one sub-industry (''exception''), decreases for two industries and no changes for three industries. Based on common size standards for certain NAICS Industry Groups, the results in Table 5 appear to support increases in size standards for 20 industries and one sub-industry, a decrease for one industry, and no changes for three industries

However, lowering small business size standards is not in the best interests of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate was 9.4 percent or higher from May 2009 to December 2010. It somewhat moderated to 8.8 percent in March 2011, but it has been 9 percent or higher for the May–July 2011 quarter. The unemployment rate is forecast to remain at this elevated level at least through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling for small businesses; and provides $12 billion in tax relief to help small

businesses invest in their firms and create jobs.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS codes	NAICS Industry titles	Current size standard ($ million)	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)
531110	Lessors of Residential Buildings and Dwellings	$7.0	$19.0	$25.5
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	7.0	30.0	25.5
531130	Lessors of Miniwarehouses and Self Storage Units	25.5	14.0	25.5
531190	Lessors of Other Real Estate Property	7.0	14.0	25.5
Except,	Leasing of Building Space to Federal Government by Owners	20.5	35.5	.....
531210	Offices of Real Estate Agents and Brokers	2.0	7.0	7.0
531311	Residential Property Managers	2.0	10.0	7.0
531312	Nonresidential Property Managers	2.0	14.0	7.0
531320	Offices of Real Estate Appraisers	2.0	5.0	7.0
531390	Other Activities Related to Real Estate	2.0	19.0	7.0
532111	Passenger Car Rental	25.5	35.5	35.5
532112	Passenger Car Leasing	25.5	30.0	35.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	25.5	35.5	35.5
532210	Consumer Electronics and Appliances Rental	7.0	35.5	.....
532220	Formal Wear and Costume Rental	7.0	19.0	.....
532230	Video Tape and Disc Rental	7.0	25.5	.....
532291	Home Health Equipment and Rental	7.0	30.0	.....
532292	Recreational Goods Rental	7.0	5.0	.....
532299	All Other Consumer Goods Rental	7.0	7.0	.....
532310	General Rental Centers	7.0	7.0	.....
532411	Commercial, Air, Rail, and Water, Transportation Equipment and Rental	7.0	35.5	30.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing.	12.5	30.0	30.0
532420	Office Machinery and Equipment Rental and Leasing	25.5	25.5	30.0
532490	Other Commercial, and Industrial Machinery and Equipment Rental and Leasing.	7.0	30.0	30.0
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	7.0	35.5	.....

Lowering size standards could decrease the number of firms that are able to participate in Federal financial and procurement assistance for small businesses. Furthermore, size standards based solely on analytical results without any other considerations could cut off currently eligible small firms from those programs. That would run counter to what SBA and the Federal Government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not propose to reduce size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards. SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

Based on comparisons between industry specific size standards and common size standards within each Industry Group, SBA finds that for some industries common size standards are more appropriate for several reasons. First, analyzing industries at a more aggregated Industry Group level simplifies size standards analysis and the results are likely to be more consistent among related industries. Second, in most cases, industries within each Industry Group currently have the same size standards and SBA believes it is better to keep the revised size standards also the same. Third, within each Industry Group many of the same businesses tend to operate in the same multiple industries. SBA believes that common size standards reflect the Federal marketplace in those industries better than do different size standards for each industry. Fourth, industry specific size standards and common size standards are mostly within a reasonably close range.

For industries where both industry specific size standards and common size standards have been calculated, SBA, for the above reasons, proposes to apply common size standards. For industries where SBA has not estimated common size standards, it proposes to apply industry-specific size standards. As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal Government is doing to stimulate the economy and encourage job growth through the Recovery Act and the Jobs Act. Therefore, for those industries for which its analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Of the 24 industries and one sub-industry in NAICS Sector 53 that SBA reviewed for this proposed rule, the Agency proposes to increase size standards for 20 industries and one sub-industry and retain the current size standards for four industries. Industries for which SBA has proposed to increase their size standards and proposed standards are in Table 7 (below).

Not lowering size standards in NAICS Sector 53 is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency's recently proposed rules for NAICS Sector 54, Professional, Technical, and Scientific

Services (76 FR 14323, March 16, 2011), NAICS Sector 48–49, Transportation and Warehousing (76 FR 27935, May 13, 2011), NAICS Sector 51, Information (76 FR 63216, October 12, 2011), and NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510, October 12, 2011). In each of those final and proposed rules, SBA opted not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS codes	NAICS Industry titles	Current size standard ($ million)	Proposed size standard ($ million)
531110	Lessors of Residential Buildings and Dwellings	$7.0	$25.5
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	7.0	25.5
531190	Lessors of Other Real Estate Property	7.0	25.5
Except,	Leasing of Building Space to Federal Government by Owners	20.5	35.5
531210	Offices of Real Estate Agents and Brokers	2.0	7.0
531311	Residential Property Managers	2.0	7.0
531312	Nonresidential Property Managers	2.0	7.0
531320	Offices of Real Estate Appraisers	2.0	7.0
531390	Other Activities Related to Real Estate	2.0	7.0
532111	Passenger Car Rental	25.5	35.5
532112	Passenger Car Leasing	25.5	35.5
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	25.5	35.5
532210	Consumer Electronics and Appliances Rental	7.0	35.5
532220	Formal Wear and Costume Rental	7.0	19.0
532230	Video Tape and Disc Rental	7.0	25.5
532291	Home Health Equipment and Rental	7.0	30.0
532411	Commercial, Air, Rail, and Water, Transportation Equipment and Rental	7.0	30.0
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	12.5	30.0
532420	Office Machinery and Equipment Rental and Leasing	25.5	30.0
532490	Other Commercial, and Industrial Machinery and Equipment Rental and Leasing	7.0	30.0
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	7.0	35.5

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 53, Real Estate and Rental and Leasing, for which it has proposed to increase size standards, no firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, if adopted, small business shares of total industry receipts among those industries vary from less than .01 percent to 2.0 percent, with an average of 0.4 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry and sub-industry reviewed in this proposed rule. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA proposes common size standards for industries within certain NAICS Industry Groups, namely NAICS 5311, NAICS 5312 and 5313, NAICS 5321, and NAICS 5324 (*see* Table 4, above). SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt common size standards for those industries or establish a separate size standard for each industry, or,

b. Whether the proposed common size standards for those industries are at the correct levels or what are more appropriate size standards if the proposed standards are not suitable.

4. SBA's analysis supports increasing the size standard for Leasing of Building Space to Federal Government by Owners (''exception'' to NAICS 531190) from $20.5 million to $35.5 million. SBA has also proposed, based on the use of a common size standard for NAICS Industry Group 5311, to increase the size standard for NAICS 531190 to $25.5 million. Federal contracting under this NAICS code did not exceed $100 million annually and was not, therefore, a significant factor. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should also apply the same common $25.5 million size standard for Leasing of Building Space to Federal Government by Owners and remove it as an exception to NAICS 531190; or

b. Whether SBA should adopt a size standard of $35.5 million based on the analysis and retain it as an exception to NAICS 531190.

5. SBA's proposed size standards are based on its evaluation of five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and the level, and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider for assessing industry characteristics when evaluating or revising size standards. SBA also seeks information on relevant data sources, if available.

6. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

7. For some industries, based on its analysis of industry and program data alone, SBA proposes to increase the existing size standards by a large amount (such as NAICS 532210, NAICS 532291, NAICS 532411, NAICS 532490, and NAICS 533110), while for others the proposed increases are modest. SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

Based on the analysis of industry and program data and use of common size standards for closely related industries, SBA has proposed to increase the size standard for NAICS 531210 (Offices of Real Estate Agents and Brokers) from $2.0 million to $7.0 million. To determine if a company meets the size standard for NAICS 531210, a firm may exclude ''* * * funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue'' (*see* Footnote 10 to SBA's table of size standards). SBA seeks feedback on whether it should continue or terminate the exclusion of funds received in trust for an unaffiliated third party from receipts if it adopts its proposed standard or any other standard considerably higher than the existing standards for this industry. SBA also welcomes information and data on how businesses in this industry collect and report income for Federal Income Tax Returns, and what they recognize as business receipts (*see* 13 CFR 121.104 for SBA's definition of ''receipts'').

9. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating both its size standard methodology and the proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the proposed size standards for a number of industries in NAICS Sector 53, Real Estate and Rental and Leasing, will better reflect the economic characteristics of small businesses and the Federal Government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The Supplementary Information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 20 industries and one sub-industry in NAICS Sector 53 for which SBA has proposed increasing size standards, SBA estimates that about 13,000 additional firms will obtain small business status and become eligible for these programs. That represents nearly 5.0 percent of the total number of firms that are classified as small under the current standards in all industries within NAICS Sector 53. If adopted as proposed, this will increase the small business share of total industry receipts in all industries within NAICS Sector 53 from about 27 percent under the current size standards to nearly 39 percent.

Three groups will benefit from these proposed size standards if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have larger pools of small businesses from which to draw for their small business procurement programs.

During fiscal years 2007–2009, about 99 percent of Federal contracting dollars

spent in industries reviewed in this proposed rule were accounted for by the 20 industries and one sub-industry for which SBA has proposed to increase size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could potentially obtain Federal contracts totaling up to $70 million to $75 million annually under SBA's small business, 8(a), HUBZone, WOSB, and SDVO SBC Programs and other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Federal Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008–2010 data, SBA estimates about 50 to 60 additional loans totaling about $15 million to $20 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly their number and the total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for business concerns that do not meet the size standards for their industry ($15 million in tangible net worth and $5 million in net income after income taxes). Therefore, SBA finds it similarly difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that 13,000 newly defined additional small firms could become active in Federal procurement programs, if adopted, the proposed size standards changes may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. In addition, there will be more firms seeking SBA guaranteed loans, more firms eligible for enrollment in the CCR's Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or those qualifying for small business, WOSB, SDVO SBC, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. The additional costs associated with fewer bidders, however, are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standards, if adopted, may have distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS–NG data only identify the size of businesses receiving Federal contracts as ''small businesses'' or ''other than small businesses'' FPDS–NG does not provide the exact size of the business.

The proposed revisions to the existing size standards for Industries in NAICS Sector 53, Real Estate and Rental and Leasing, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S and sought their input as part of the Jobs Act tours. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and

Federal agencies in preparing this proposed rule.

The review of NAICS Sector 53, Real Estate and Rental and Leasing, is consistent with EO 13563, Sec 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and will revise them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every five years thereafter.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose new reporting or record keeping requirements, other than those required of SBA.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in NAICS Sector 53, Real Estate and Rental and Leasing. As described above, this rule may affect small entities seeking Federal contracts, loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What are the need for and objective of the rule?

Most of the size standards in NAICS Sector 53, Real Estate and Rental and Leasing Support Services, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in the Sector. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 13,000 additional firms will become small because of increases in size standards in 20 industries and one sub-industry. That represents nearly 5.0 percent of total firms that are small under current size standards in all industries within NAICS Sector 53. This will result in an increase in the small business share of total industry receipts for this Sector from about 27 percent under the current size standards to nearly 39 percent under the proposed standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

(3) What are the projected reporting, record keeping and other compliance requirements of the rule and an estimate of the classes of small entities, which will be subject to the requirements?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the CCR database and certify at least once annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate

or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the system of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR Part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. Revise the authority citation for part 121 to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

a. Under the heading Sector 53 Real Estate and Rental and Leasing, revise the entries for ''531110,'' ''531120,'' ''531190,'' ''Except,'' ''531210,'' ''531311,'' ''531312,'' ''531320,'' ''531390,'' ''532111,'' ''532112,'' ''532120,'' ''532210,'' ''532220,'' ''532230,'' ''532291,'' ''532411,'' ''532412,'' ''532420,'' ''532490,'' and ''533110,'' and

b. Revise footnote 9 at the end of the table to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
	Sector 53—Real Estate and Rental and Leasing		
531110	Lessors of Residential Buildings and Dwellings	$25.5	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	25.5	
	* * * * *	*	
531190	Lessors of Other Real Estate Property	25.5	
Except,	Leasing of Building Space to Federal Government by Owners [9]	[9] 35.5	
531210	Offices of Real Estate Agents and Brokers [10]	[10] 7.0	
531311	Residential Property Managers	7.0	
531312	Nonresidential Property Managers	7.0	
531320	Offices of Real Estate Appraisers	7.0	
531390	Other Activities Related to Real Estate	7.0	
*	* * * * *	*	*
532111	Passenger Car Rental	35.5	
532112	Passenger Car Leasing	35.5	
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing	35.5	
532210	Consumer Electronics and Appliances Rental	35.5	
532220	Formal Wear and Costume Rental	19.0	
532230	Video Tape and Disc Rental	25.5	
532291	Home Health Equipment Rental	30.0	
*	* * * * *	*	*
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	30.0	
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	30.0	
532420	Office Machinery and Equipment Rental and Leasing	30.0	
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	30.0	
*	* * * * *	*	*
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	35.5	
*	* * * * *	*	*

Footnotes

* * * * *

9. *NAICS code 531190—Leasing of building space to the Federal Government by Owners:* For Government procurement, a size standard of $35.5 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

* * * * *

Dated: September 9, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–29448 Filed 11–14–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 218

[Docket No. 111019636–1638–01]

RIN 0648–BB53

Taking and Importing Marine Mammals: U.S. Navy Training in 12 Range Complexes and U.S. Air Force Space Vehicle and Test Flight Activities in California

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

ACTION: Proposed rule; request for comments.

SUMMARY: Between January 2009 and May 2011, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued twelve 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities. Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-year regulations to govern the unintentional taking of marine mammals incidental to U.S. Air Force (USAF) space vehicle and test flight activities from Vandenberg Air Force Base (VAFB). These regulations require the issuance of annual ''Letters of Authorization'' (LOAs).

Since the issuance of the rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. NMFS now proposes to amend the regulations for the affected Navy training ranges to provide for additional flexibility and allow for LOAs with longer periods of validity. Similarly, NMFS now proposes to amend the regulations issued to VAFB in February 2009, to allow for greater flexibility regarding the types and amounts of missile and rocket launches that the USAF conducts.

DATES: Comments and information must be received no later than December 15, 2011.

ADDRESSES: You may submit comments, identified by 0648–BB53, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Regarding the Navy action, a copy of the Navy's LOA applications, NMFS' Records of Decision (RODs), and NMFS' proposed and final rules and subsequent LOAs; and regarding the USAF action, a copy of the USAF's LOA application, NMFS' Environmental Assessment and Finding of No Significant Impact, and NMFS' proposed and final rules and subsequent LOAs, and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephone via the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, to issue a notice of proposed authorization for public review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations, and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Between January 2009 and May 2011, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities. conducted in the Hawaii Range Complex (HRC), the Southern California (SOCAL) Range Complex, the Atlantic Fleet Active Sonar Training (AFAST) Study Area, the Jacksonville (JAX) Range Complex, the Virginia Capes (VACAPES) Range Complex, the Cherry Point (CHPT) Range Complex, the Naval Surface Warfare Center Panama City Division (NSWC PCD), the Mariana Islands Range Complex (MIRC), the Northwest Training Range Complex (NWTRC), the Keyport Range Complex, the Gulf of Mexico (GOMEX) Range Complex, and the Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA). Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-year regulations to govern the unintentional taking of marine mammals incidental to U.S. Air Force (USAF) space vehicle and test flight activities from Vandenberg Air Force Base (VAFB). These regulations, which allow for the issuance of annual ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the specified activities and

described timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

Currently, with the exception of the GOA TMAA regulation (which allows for biennial LOAs), these rules state that LOAs must be renewed annually. To date, the Navy has complied with this requirement, and NMFS has issued annual LOAs to the Navy for activities on its training ranges; however, in order to alleviate some of the administrative burden associated with processing annual LOAs, the Navy has requested that NMFS revise the current regulations to allow for LOAs with longer periods of validity. NMFS' regulations implementing section 101(a)(5)(A) through (D) of the MMPA do not limit the period of validity for LOAs to one year, and NMFS relied on this authority when regulations were promulgated for the GOA TMAA that allow for LOAs to be issued on an annual or biennial basis (76 FR 25480, May 4, 2011). The specific language found in the general regulations governing small takes of marine mammals incidental to specified activities states that, ''Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.'' 50 CFR 216.106(c). With respect to the proposed revision to the timing of LOA renewals, the period of validity for the LOAs would be extended past one year, but will not exceed the time remaining on the 5-year rule. For example, under the proposed revision, if the Navy requested a multi-year LOA for AFAST in 2012, the LOA could only be valid for a maximum of two years because the 5-year rule expires in 2014. Other factors may be taken into consideration when determining the period of validity for a multi-year LOA, such as the degree of advanced planning regarding future training or exercise schedules and the details concerning the amount of activity and marine mammal occurrence documented in the previous year's monitoring and exercise reports. The regulations would still require the Navy to submit annual monitoring and exercise reports, NMFS and the Navy would still hold annual monitoring and adaptive management meetings, and LOAs could still be changed based on the availability of new information regarding training activities or the marine mammals affected.

In addition, these rules as first issued (a subset have been modified) quantified the specific amounts of individual sound source use that would occur over the course of the 5-year rules, and indicated that marine mammal take could only be authorized in an LOA incidental to the source types and amounts described. No language was initially included expressly allowing for deviation from those precise levels of source use if the total number of takes remain within the analyzed and authorized limits. Since the issuance of the rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. In response to this need, when the Navy requested incidental take authorization for the most recent area (GOA TMAA), NMFS included language explicitly allowing for greater flexibility in both source amount and type. Recently, NMFS amended the HRC, SOCAL Range Complex, AFAST, VACAPES, and JAX regulations to explicitly allow for greater flexibility in the types and amount of sound sources that they use (76 FR 6699, February 8, 2011, and 76 FR 30552, May 26, 2011). NMFS now proposes to amend the regulations for the remaining Navy training ranges to allow this same flexibility and ensure consistency.

The USAF regulations for activities at VAFB as first issued quantified the specific amounts of missiles and rockets that could be launched over the course of the 5-year rule and indicated that marine mammal take could only be authorized in an LOA incidental to the amounts described. No language was initially included expressly allowing for deviation from those precise launch levels if the total number of takes remains within the analyzed and authorized limits. Since the issuance of the rule, the USAF realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of missile and rocket launches that they conduct. NMFS now proposes to amend the regulations issued to VAFB in February 2009, to allow for such flexibility.

Summary of the Navy Modifications

Multi-Year LOAs

On May 4, 2011, NMFS issued 5-year regulations governing the taking of marine mammals incidental to training activities conducted in the Gulf of Alaska Temporary Maritime Training Activities Area (76 FR 25480). These regulations allow for the issuance of annual or biennial LOAs (only annual LOAs had been allowed for in the previous Navy rules issued), but retain the annual reporting and meeting requirements.

After the issuance of the 2011 Gulf of Alaska rule, the Navy inquired about proposing amendments to the previously implemented Navy rules that would enable NMFS to renew LOAs for other training ranges on a multi-year basis. The ability to issue multi-year LOAs reduces administrative burdens on both NMFS and the Navy. In addition, multi-year LOAs would avoid situations where the last minute issuance of LOAs necessitated the commitment of extensive resources by the Navy for contingency planning.

This proposed modification would amend the regulations to allow the issuance of multi-year LOAs for all 12 Navy range complexes: HRC, SOCAL, AFAST, JAX, VACAPES, CHPT, NSWC PCD, MIRC, NWTRC, Keyport, GOA TMAA and GOMEX. The regulations for these range complexes currently limit the period of validity for LOAs to one year (two for GOA TMAA) and the Navy must request renewal of LOAs annually (biennially for GOA TMAA). Although the proposed amendments would increase the period of validity for LOAs, the regulations would retain the annual reporting and adaptive management meeting requirements that ensure NMFS is able to evaluate the Navy's compliance and marine mammal impacts with the same attention and frequency. In addition, a new LOA can be issued to incorporate any needed mitigation or monitoring measures developed through adaptive management, or if the Navy proposes changes to their activity within a given reporting period (*i.e.,* one year).

Interannual Flexibility (Source Type and Amount of Use)

With respect to the second proposed modification regarding the types of sources for which incidental take is authorized, in some cases the Navy's rules identified the most representative or highest power source to represent a group of known similar sources. Additionally, the Navy regularly modifies or develops new technologies, which often results in sound sources that are similar to, but not exactly the same as, existing sources. In order to address these source modifications and the development of new technologies, NMFS proposes to include new regulatory language designed to allow for more flexibility by authorizing take incidental to the previously identified specific sound source or ''similar sources'' (*i.e.,* those that have similar characteristics to the specific sources and do not change any of the underlying

analysis). In the February 8, 2011, modification to the HRC, SOCAL, and AFAST rules, NMFS increased the flexibility of the regulations by inserting language that explicitly allows for authorization of take incidental to the previously identified specified sound sources or ''similar sources'' (with similar characteristics that do not change any of the underlying analyses). NMFS now proposes inserting similar language in the following Navy rules: CHPT; NSWC PCD; MIRC; Keyport; GOMEX; and NWTRC.

Finally, regarding amounts of sound source use, the regulations only allow for the authorization of take incidental to a 5-yr maximum amount of use for each specific sound source, even though in most cases our effects analyses do not differentiate the impacts from the majority of the different types of sources. Specifically, although some sonar sources are louder or generate more acoustic energy in a given amount of time, which results in more marine mammal takes, we authorize total takes but do not differentiate between the individual takes that result from one source versus another. The proposed rule would amend the Navy rules to allow for inter-annual variability in the amount of source use identified in each LOA. For example, in one year the Navy could use a lot of one source and a little of another, and the next year those amounts could be reversed; however, the amount of inter-annual variability cannot result in exceeding the total level of incidental take analyzed and identified in the final rules, and the taking cannot result in more than a negligible impact on affected species or stocks. Language of this nature was included in final regulations governing the authorization of take incidental to the Navy's training activities in the Mariana Islands and Northwest Training Range Complexes, which were issued in 2010. NMFS issued interim final rules amending the HRC, SOCAL Range Complex, AFAST, VACAPES, and JAX regulations by adding language of this nature to increase operational flexibility in those range complexes (76 FR 6699, February 8, 2011, and 76 FR 30552, May 26, 2011). However, this language has not been adopted in the remaining Navy rules and NMFS now proposes including language of this nature in the regulations governing the authorization of take incidental to the additional Navy range complex not previously addressed by either the final rules or interim final rules mentioned above.

These regulatory amendments do not change the analyses of marine mammal impacts conducted in the original final rules. This is assured and illustrated through: (1) The Navy's submission of LOA applications for each area, which include take estimates specific to the upcoming period's activities (*i.e.,* sound source use); (2) their subsequent annual submission of classified exercise reports, which accurately report the specific amount of use for each sound source over the course of the previous year; and (3) their annual submission of monitoring reports, which describe observed responses of marine mammals to Navy sound sources collected via visual, passive acoustic, or tagging methods. Together, these submissions allow NMFS to accurately predict and track the Navy's activities to ensure that both NMFS' LOAs, and the impacts of the Navy's activities on marine mammals, remain within what is analyzed and allowed under the 5-year regulations.

Summary of the USAF Modification

In the 5-year regulations issued to the USAF in February 2009, NMFS authorized up to 30 missile launches and up to 20 rocket launches annually from VAFB (74 FR 6236, February 6, 2009). Those regulations analyzed potential impacts from many different types of missiles and rockets, such as the Atlas, Delta, Falcon, and intercontinental ballistic missiles. At the time of issuance of the regulations to the USAF, the Falcon was not yet ready for launch, but it was anticipated that the first launch of such a rocket would occur around August 2009. Information related to this rocket type was analyzed in both the proposed and final rulemaking documents. The Falcon has not yet been launched from VAFB, and it is anticipated that the first launch would occur in late 2012 or early 2013.

In order to accommodate the necessary launches of the Falcon rocket, the USAF has indicated that it needs to reassign the amount of the 50 total launches allowed annually. Instead of the 30 missile and 20 rocket launches currently authorized per year, the USAF has requested that they be permitted to conduct 15 missile launches and 35 rocket launches per year. The total number of annual launches would remain at 50.

As indicated above, this regulatory amendment does not change the analyses of marine mammal impacts conducted in the original final rule. This fact is assured and illustrated through: (1) The USAF's submission of annual LOA requests for the activities at VAFB related to space vehicle and test flight activities; and (2) their annual submission of monitoring reports, which describe observed responses of marine mammals to USAF missile and rocket launches and aircraft activity collected via visual monitoring and acoustic recording methods. These submissions allow NMFS to accurately predict and track the USAF's activities to ensure that both NMFS' LOAs and the impacts of the USAF's activities on marine mammals remain within what is analyzed and allowed under the 5-year regulations.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605 (b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy and USAF are the only entities that will be affected by this rulemaking, not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy and USAF. NMFS does not expect the amendments of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and USAF and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: November 8, 2011.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

2. In § 216.120, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 216.120 Specified activity and specified geographical region.

(a) * * *

(1) Launching up to 15 missiles each year from Vandenberg Air Force Base, for a total of up to 75 missiles over the 5-year period of the regulations in this subpart,

(2) Launching up to 35 rockets each year from Vandenberg Air Force Base, for a total of up to 175 rocket launches over the 5-year period of the regulations in this subpart,

* * * * *

3. Section 216.121 is revised to read as follows:

§ 216.121 Effective dates.

Amended regulations are effective from the date of publication of the final rule, through February 6, 2014.

4. In § 216.171, paragraph (a) is revised to read as follows:

§ 216.171 Effective dates and definitions.

(a) Amended regulations are effective from the date of publication of the final rule, through January 5, 2014.

* * * * *

5. In § 216.177, paragraph (a) is revised to read as follows:

§ 216.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.178 and the modification conditions in § 216.179.

* * * * *

6. In § 216.178 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 216.177 for the activity identified in § 216.170(c) may be renewed for an amount of time not to exceed the periods of validity of this subpart upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.176 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.174 and the Letter of Authorization issued under §§ 216.106 and 216.177, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

7. In § 216.241, paragraph (a) is revised to read as follows:

§ 216.241 Effective dates and definitions.

(a) Amended regulations are effective from the date of publication of the final rule, through January 22, 2014.

* * * * *

8. In § 216.247 paragraph (a) is revised to read as follows:

§ 216.247 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.248 and the modification conditions in § 216.249.

* * * * *

9. In § 216.248 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 216.248 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.247 for the activity identified in § 216.240(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.246 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.244 and the Letter of Authorization issued under §§ 216.106 and 216.247, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

10. In § 216.271, paragraph (a) is revised to read as follows:

§ 216.271 Effective dates and definitions.

(a) Amended regulations are effective from the date of publication of the final rule, through January 14, 2014.

* * * * *

11. In § 216.277, paragraph (a) is revised to read as follows:

§ 216.277 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.278 and the modification conditions in § 216.279.

* * * * *

12. In § 216.278, paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 216.278 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.277 for the activity identified in § 216.270(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.276 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.274 and the Letter of Authorization issued under §§ 216.106 and 216.277, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

13. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

14. In § 218.1, paragraph (d) is revised to read as follows:

§ 218.1 Specified activity and specified geographical area and effective dates.

* * * * *

(d) Amended regulations are effective from the date of publication of the final rule, through June 4, 2016.

* * * * *

15. In § 218.7 paragraph (a) is revised to read as follows:

§ 218.7 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.8 and the modification conditions in § 218.9.

* * * * *

16. In § 218.8 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.7 for the activity identified in § 218.1(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.6 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.4 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.7, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

17. In § 218.10, paragraph (d) is revised to read as follows:

§ 218.10 Specified activity and specified geographical area and effective dates.

* * * * *

(d) Amended regulations are effective on the date of publication of the final rule, through June 4, 2016.

* * * * *

18. In § 218.16 paragraph (a) is revised to read as follows:

§ 218.16 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.17 and modification conditions in § 218.18.

* * * * *

19. In § 218.17 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.17 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.16 for the activity identified in § 218.10(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.15 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.13 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.16, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

20. In § 218.20, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.20 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(d) Regulations are effective from the date of publication of the final rule, through June 4, 2014.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.20(c) should the amounts (*e.g.,* number of exercises) vary from those estimated in § 218.20(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.21(c).

21. In § 218.23, paragraph (a)(4)(i)(A) is revised to read as follows:

§ 218.23 Mitigation.

(a) * * *

(4) * * *

(i) * * *

(A) This activity shall only occur in Areas 4/5 and 13/14, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 218.21(c).

* * * * *

22. In § 218.26 paragraph (a) is revised to read as follows:

§ 218.26 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.27 and the modification conditions in § 218.28.

* * * * *

23. In § 218.27 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.27 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.26 for the activity identified in § 218.20(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.25 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.23 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.26, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

24. In § 218.30, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.30 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(d) Regulations are effective from the date of publication of the final rule, through February 17, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.30(c) should the amounts (*e.g.,* number of exercises) vary from those estimated in § 218.30(c), provided that

the variation does not result in exceeding the amount of take indicated in § 218.31(c).

25. In § 218.33, paragraph (a)(3)(i)(A) is revised to read as follows:

§ 218.33 Mitigation.

(a) * * *

(3) * * *

(i) * * *

(A) This activity shall only occur in the W–155A/B (hot box) area, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 218.31(c).

* * * * *

26. In § 218.36, paragraph (a) is revised to read as follows:

§ 218.36 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.37 and the modification conditions in § 218.38.

* * * * *

27. In § 218.37 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.36 for the activity identified in § 218.30(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.35 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.33 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.36, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

28. In § 218.100, paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 218.100 Specified activity and specified geographical area.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

* * * * *

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

* * * * *

29. Section 218.101 is revised to read as follows:

§ 218.101 Effective dates.

Amended regulations are effective from the date of publication of the final rule, through August 3, 2015.

30. In § 218.107 paragraph (a) is revised to read as follows:

§ 218.107 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.108 and the modification conditions in § 218.109.

* * * * *

31. In § 218.108 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.108 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.107 for the activity identified in § 218.100(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.106 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.104 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.107, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

32. In § 218.110, paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 218.110 Specified activity and specified geographical area.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

* * * * *

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

* * * * *

33. Section 218.111 is revised to read as follows:

§ 218.111 Effective dates.

Amended regulations are effective from the date of publication of the final rule, through November 9, 2015.

34. In § 218.117 paragraph (a) is revised to read as follows:

§ 218.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.118 and the modification conditions in § 218.119.

* * * * *

35. In § 218.118 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.118 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.117 for the activity identified in § 218.110(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.116 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.114 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.117, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

36. Section 218.121 is revised to read as follow:

§ 218.121 Effective dates.

Amended regulations in this subpart are effective from the date of publication of the final rule, through May 4, 2016.

37. In § 218.127 paragraph (a) is revised to read as follows:

§ 218.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.128 and the modification conditions in § 218.129.

* * * * *

38. In § 218.128 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.128 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.127 for the activity identified in § 218.120(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.126 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.124 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.127, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

39. In § 218.170 paragraphs (c) introductory text and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.170 Specified activity and specified geographical area and effective dates.

* * * * *

(c) These regulations apply only to the taking of marine mammals by the Navy if it occurs incidental to the following activities, or similar activities, and sources, or similar sources (estimate amounts of use below):

* * * * *

(d) Amended regulations are effective from the date of publication of the final rule, through April 11, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 218.170(c) should the amounts (*e.g.,* hours, number of exercises) vary from those estimated in § 218.170(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.171(c).

40. In § 218.176 paragraph (a) is revised to read as follows:

§ 218.176 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.177 and the modification conditions in § 218.178.

* * * * *

41. In § 218.177 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.177 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.176 for the activity identified in § 218.170(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.175 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.173 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.176, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

42. In § 218.180, paragraphs (c) introductory text, (c)(1) introductory text, (c)(2) introductory text, (c)(3) introductory text, (c)(4) introductory text, (c)(5) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.180 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in territorial waters (estimated amounts below):

* * * * *

(2) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in non-territorial waters (estimated amounts below):

* * * * *

(3) Ordnance operations, or similar operations, for Navy mission activities in territorial waters (estimated amounts below):

* * * * *

(4) Ordnance operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

* * * * *

(5) Projectile firing operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

* * * * *

(d) Amended regulations are effective from the date of publication of the final rule, through January 21, 2015.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 218.180(c) should the amounts (*e.g.,* hours, number of exercises) vary from those estimated in § 218.180(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.181(b).

43. In § 218.186 paragraph (a) is revised to read as follows:

§ 218.186 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.187 and the modification conditions in § 218.188.

* * * * *

44. In § 218.187 paragraphs (a), (a)(1), and (a)(3) are revised to read as follows:

§ 218.187 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.186 for the activity identified in § 218.180(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.185 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.183 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.186, were undertaken and will be undertaken

during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

[FR Doc. 2011–29494 Filed 11–14–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 220
Tuesday, November 15, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: This notice lists approved candidates who will comprise a standing roster for service on the Agency's 2011 and 2012 SES Performance Review Boards. The Agency will use this roster to select SES board members, and an outside member(s) for the convening SES Performance Review Board each year. The standing roster is as follows:

Allen, Colleen
Brause, Jon
Capozzola, Christa
Carroll, Sean
Chan, Carol
Crumbly, Angelique
Eugenia, Mercedes
Foley, Jason
Gomer, Lisa
Gottlieb, Gregory
Horton, Jerry
McNerney, Angela
O'Neill, Maura
Ostermeyer, David
Pascocello, Susan
Peters, James
Warren, Wade
Wells, Barry
Wiggins, Sandra
Barry Socks, Outside SES Member
John Acton, Outside SES Member
Barbara Pabotoy, Outside SES Member

FOR FURTHER INFORMATION CONTACT: Melissa Jackson, (202) 712–1781.

Dated: October 25, 2011.

Vanessa Prout,

Division Chief, Employee and Labor Relations Division.

[FR Doc. 2011–29427 Filed 11–14–11; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the California Advisory Committee (Committee) to the Commission will meet on Monday, December 5, 2011. The first meeting of the Committee will begin at 1 p.m. and adjourn about 2 p.m.; the purpose of the first meeting is member orientation and discussion of administrative matters. The second meeting will begin at approximately 2 p.m. and adjourn at about 4 p.m.; the purpose of the second meeting is a discussion of the Committee's report on free speech on California public college and university campuses. The meetings will be held at the Mexican American Legal Defense and Education Fund (MALDEF), 634 South Spring Street, 11th Floor, Los Angeles CA 90014.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by January 5, 2012. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD (913) 551–1414), or by email to *atrevino@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 Western 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 Western Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, November 8, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–29346 Filed 11–14–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 72–2011]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Trade and Export Company, grantee of FTZ 61, requesting authority to expand the zone to include a site in Aguadilla, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 9, 2011.

FTZ 61 was approved on October 20, 1980 (Board Order 165, 45 FR 71408, 10/28/80). The zone was expanded on September 28, 2007 (Board Order 1528, 72 FR 56723, 10/4/07) and on July 8, 2010 (Board Order 1698, 75 FR 41819–41820, 7/19/10).

The zone currently consists of 23 sites (692.55 acres): *Site 1* (224.32 acres total)—five parcels within the International Trade Center grounds in Guaynabo; *Site 2* (11 acres, sunset 10/31/12)—North Distribution Center, located at Km. 1.1 on Highway 869, Cataño; *Site 3* (15 acres, sunset 10/31/12)—Cataño Equipment and Storage Complex, intersection of Highway 165 and Las Palmas Avenue, Cataño; *Site 4* (2 acres, sunset 10/31/14)—Bayamon Logistics, Storage and Distribution Center, intersection of Calle C and Highway 28, Bayamón; *Site 5* (17.38 acres total, sunset 10/31/12)—five parcels within the Corujo Industrial Park in Bayamón; *Site 6* (4 acres, sunset 10/31/12)—warehouse facilities located on the north side of Highway 2, one mile east of Highway 165, Toa Baja; *Site 7* (2 acres, sunset 10/31/12)—Baldioroty de Castro Warehouse and Distribution Center, located at intersection of Km

10.3, Marginal de la Avenida de Baldioroty de Castro, Carolina; *Site 8* (5 acres, sunset 10/31/14)—Manatí chemical warehouse, intersection of Highways 686 and 670, Manatí; *Site 9* (7 acres, sunset 10/31/14)—warehouse facilities located at Km 28.6 on Highway 1, Caguas; *Site 10* (15 acres, sunset 10/31/12)—storage complex at J.F. Kennedy Avenue and Km 3.9, San Juan; *Site 11* (32 acres)—Mayaguez Regional Distribution Center, 201 Algarrobo Avenue, Mayagüez; *Site 12* (4.4 acres)—Yabucoa Port Facility, located east of PR Road 53 on PR Road 9914 at the Port of Yabucoa, Yabucoa; *Site 13* (3 acres)—Benitez Group and Sedeco Discount, Inc., State Road 3, Km 77.2, Barrio Abajo, Humacao; *Site 14* (5.96 acres, sunset 6/30/15)—Angora Industrial Park, Rd #1, Km 32.6, Bairoa Avenue, Caguas; *Site 15* (8.73 acres, sunset 6/30/15)—two parcels within the Royal Industrial Park in Cataño; *Site 16* (0.78 acres, sunset 6/30/15)—Benitez Commercial Complex, Rd #1, Km 32.9, Bairoa Avenue, Caguas; *Site 17* (7 acres)—warehouse building located at Road #5, Km 4.0, Barrio Palmas, Cataño; *Site 18* (300.6 acres)—Yabucoa Industrial Park, located on Puerto Rico Road 2, Km 92.0 in the Agucate district, Yabucoa; *Site 19* (1.95 acres total)—two parcels within the Palmas Industrial Zone in Cataño; *Site 20* (2.25 acres)—warehouse/storage facility located at Km 30.6 and PR #1, Caguas; *Site 21* (5.11 acres)—Mercado Central, Calle C #1229, Puerto Nuevo; *Site 22* (1.17 acres)—Autogermana Inc., 275 Cesar Gonzalez Avenue, San Juan; and, *Site 23* (16.9 acres, expires 8/31/14)—Rooms To Go, Road #2, Km 19.1, Bo. Candelario, Toa Baja.

The applicant is requesting authority to expand the zone to include a site at the Rafael Hernández Airport in Aguadilla (Proposed Site 24—1,124.03 acres). The site will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 17, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 30, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*.

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 9, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–29501 Filed 11–14–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 71–2011]

Foreign-Trade Zone 87—Lake Charles, LA; Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lake Charles Harbor & Terminal District, grantee of FTZ 87, requesting authority to reorganize and expand the zone in Lake Charles. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 8, 2011.

FTZ 87 was approved on July 22, 1983 (Board Order 217, 48 FR 35478, 8/4/83), and expanded on April 7, 1999 (Board Order 1034, 64 FR 23052–23053, 4/29/99). The zone currently consists of six sites (1,761 acres total) in Lake Charles: *Site 1* (463 acres, 5 parcels)—general cargo area of the Port of Lake Charles; *Site 2* (360 acres, 2 parcels)—industrial areas located on both sides of the Industrial Canal (some 12 miles south of Site 1); *Site 3* (11.3 acres)—warehouse facility located at Fournet and Ford Streets; *Site 4* (3.4 acres)—warehouse facility located at 3001 Industrial Avenue; *Site 5* (391 acres)—Lake Charles Harbor & Terminal District's Industrial Park East located on Highway 397; and, *Site 6* (533.61 acres total, 3 parcels)—within the Chennault Airpark at 3650 J. Bennett Johnston Avenue, at East Broad Street, and at Avenue C.

The applicant is requesting authority to reorganize and expand the zone project as described below. The proposal includes both additions and deletions with an overall increase in total zone space: (1) Modify *Site 1* by removing 421.90 acres due to changed circumstances (new site acreage—41.10 acres); (2) expand *Site 2* to include an additional 31.73 acres (new site acreage—391.73 acres); (3) delete *Site 4* in its entirety due to changed circumstances; (4) modify *Site 5* by removing 25.733 acres due to changed circumstances (new site acreage—365.267 acres); and, (5) modify and expand *Site 6* by removing 1.8 acres due to changed circumstances and include the entire Chennault International Airport and Airpark that would encompass the remaining acreage (new site acreage—1628.276 acres). The expanded sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 17, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 30, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 8, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–29502 Filed 11–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review

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

DATES: *Effective Date:* November 15, 2011.

SUMMARY: The Department of Commerce (the Department) is currently conducting a new shipper review (NSR) of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (PRC) for the period of June 1, 2010, through December 31, 2010. As discussed below, we preliminarily determine that the producer and exporter Heze Huayi Chemical Co. Ltd. (Heze Huayi) did not satisfy the regulatory requirements to request a new shipper review; therefore, we are preliminarily rescinding this new shipper review. We invite interested parties to comment on these preliminary results. *See* ''Comments'' section below. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate Heze Huayi's entries of subject merchandise during the period of review (POR).

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1396.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2005, the Department published the order on chlorinated isocyanurates from the PRC. *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 36561 (June 24, 2005). On December 20, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), the Department received a NSR request from Heze Huayi. On February 4, 2011, the Department initiated the NSR. *See Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review,* 76 FR 6399 (February 4, 2011) (*Initiation Notice*).

On January 21, 2011, the Department placed on the record of this review CBP data for entries of chlorinated isocyanurates imported from the PRC during the POR. *See* Memorandum to the File, from Krisha Hill, Analyst, Re: Chlorinated Isocyanurates from the People's Republic of China: Customs Query Results for Heze Huayi Chemical Co., Ltd., January 21, 2011. On February 14, 2011, the Department placed on the record of this review copies of CBP entry documents pertaining to Heze Huayi's shipments of chlorinated isocyanurates during the POR. *See* Memorandum to the File, from Gene H. Calvert, Analyst, ''Chlorinated Isocyanurates from the People's Republic of China, New Shipper Review (A–570–898): Placement of U.S. Customs and Border Protection (CBP) Entry Summary Documentation on the Record of the Instant New Shipper Review,'' February 14, 2011 (Customs Entry Documents).

On February 22, 2011, the Department issued a new shipper antidumping questionnaire to Heze Huayi. Heze Huayi submitted its section A response on March 15, 2011, and its section C and D responses on April 14, 2011. On May 13, July 14, and August 31, 2011, the Department issued supplemental questionnaires to Heze Huayi. Heze Huayi responded to these supplemental questionnaires on May 27, July 28, and September 14, 2011, respectively. On May 31, 2011, Heze Huayi submitted publicly available surrogate value information for consideration in the preliminary results.

On September 26 and 27, 2011, Petitioners, Clearon Corporation and Occidental Chemical Corporation, filed rebuttal factual information and comments regarding Heze Huayi's third supplemental questionnaire response. On October 3, 2011, Heze Huayi filed comments in response to Petitioners' rebuttal factual information.

On July 15, 2011, the Department extended the time limit for issuing the preliminary results of review. *See Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 41760 (July 15, 2011).

Period of Review

Pursuant to 19 CFR 351.214(g), the POR for this NSR is the semi-annual period of June 1, 2010, through November 30, 2010. In its request for a NSR, Heze Huayi requested that we extend the POR for its NSR to capture the entry of its shipment in December, after the six-month semi-annual NSR POR. When the sale of the subject merchandise occurs within the POR specified by the Department's regulations, but the entry occurs after the POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. *See* 19 CFR 351.214(f)(2)(ii). Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the POR, but that under ''appropriate'' circumstances the Department has the flexibility to extend the POR. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319–20 (May 19, 1997). Based on the information contained in Heze Huayi's request for a NSR, it appeared that the sale of subject merchandise was made during the POR specified by the Department's regulations and that the shipment entered in the subsequent month. Based on information provided by Heze Huayi, the Department found that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department extended the POR for Heze Huayi's NSR by one month, *i.e.,* through December 31, 2010. *See Initiation Notice,* 76 FR at 6399.

Scope of the Order

The products covered by the order are chlorinated isocyanurates, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates.

Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Preliminary Rescission of the Antidumping Duty New Shipper Review of Heze Huayi

The NSR provisions of the Department's regulations require that the entity making a request for a NSR must document and certify, among other things: (1) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv). If these provisions are met, the Department will conduct a NSR to establish an individual weighted-average dumping margin for the new shipper. *See generally* 19 CFR 351.214(b)(2).

In its request for a NSR, Heze Huayi provided certified statements that it had only one U.S. sale, which it stated took place on October 8, 2010, and that the sale entered the United States on December 1, 2010. *See* Letter from Heze Huayi to the Secretary of Commerce, ''Chlorinated Isocyanurates from the People's Republic of China: Request for New-Shipper Review,'' December 20, 2010. Based on this information, the Department initiated the NSR for Heze Huayi.

However, based on an analysis of the CBP data, the Customs Entry Documents, and Heze Huayi's supplemental questionnaire responses, the Department has now determined that Heze Huayi had additional sales and entries that were not reported to the Department in its request for a NSR under 19 CFR 351.214(b)(2)(iv). As noted, in order to qualify for a NSR under 19 CFR 351.214, a company must certify and document, among other things, the dates of the first sale and all subsequent sales to the United States. *Id.* Because Heze Huayi had additional unreported sales and entries to the United States during the POR, the Department has preliminarily found that Heze Huayi's request for a NSR did not satisfy the regulatory requirements for requesting a NSR, and the Department thus preliminarily determines that it is appropriate to rescind the NSR for Heze Huayi. As much of the factual information used in our analysis of Heze Huayi's additional sales and entries involves business proprietary information, a full discussion of the basis for our preliminary determination is set forth in the Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Analysis of Heze Huayi Chemical Co., Ltd.'s Additional Sales in the Antidumping Duty New Shipper Review of Chlorinated Isocyanurates from the People's Republic of China,'' November 7, 2011.

Assessment Rates

If we proceed to a final rescission of Heze Huayi's NSR, Heze Huayi's shipments will be subject to the PRC-wide rate. The Department is currently conducting an administrative review for the POR June 1, 2010, through May 31, 2011, in which the PRC-wide rate is under review. If we proceed to a final rescission, upon completion of the 2010–2011 administrative review, we will instruct CBP to assess antidumping duties on entries exported by Heze Huayi at the appropriate PRC-wide rate determined in the 2010–2011 administrative review and we will instruct CBP to assess antidumping duties on the entries covered by this NSR at the rate established in the final results of the administrative review.

Cash Deposit Requirements

Effective upon publication of the final rescission of the NSR or the final results of the NSR, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise exported by Heze Huayi. If we proceed to a final rescission of the NSR, the cash deposit rate will continue to be the per-unit PRC-wide rate for entries exported by Heze Huayi. If we issue final results for the NSR, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Disclosure

We will disclose our analysis to parties to this proceeding not later than five days after the date of public announcement, or, if there is no public announcement, within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on these preliminary results and may submit case briefs within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties are requested to provide a summary of their arguments not to exceed five pages, and a table of statutes, regulations, and cases cited.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final rescission or final results of this NSR, including the results of our analysis of issues raised in any briefs, not later than 90 days after this preliminary rescission is issued, unless the deadline for the final rescission or final results is extended. *See* 19 CFR 351.214(i).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The NSR and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f).

Dated: November 7, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–29496 Filed 11–14–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–933]

Frontseating Service Valves From the People's Republic of China: Final Results of the 2008–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order

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

SUMMARY: On May 9, 2011, the Department of Commerce (''Department'') published the preliminary results in the 2008–2010 antidumping duty administrative review of frontseating service valves (''FSVs'') from the People's Republic of China

(''PRC'').[1] The period of review (''POR'') is October 22, 2008, through March 31, 2010. We have rescinded the review with respect to Tycon Alloy Industries (Shenzhen) Co., Ltd. (''Tycon Alloy''). We have determined that Zhejiang DunAn Hetian Metal Co., Ltd. (''DunAn'') and Zhejiang Sanhua Co., Ltd. (''Sanhua''), the only respondents in this review, made sales in the United States at prices below normal value (''NV''). There are no other respondents covered by this review. We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we made changes to our margin calculations for DunAn and Sanhua. The final dumping margins for this review are listed in the ''Final Results Margins'' section below.

DATES: *Effective Date:* November 15, 2011.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Paul Stolz, or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–4474, and (202) 482–0414, respectively.

Background

On May 9, 2011, the Department published its *Preliminary Results* in the antidumping duty administrative review of frontseating service valves from the People's Republic of China.[2] On June 7 and June 8, 2011, Sanhua and DunAn, respectively, requested a hearing for issues raised in the case and rebuttal briefs.

On June 21, 2011, all parties (Parker-Hannifin Corporation (''Petitioner''), DunAn and Sanhua) submitted publicly available surrogate value (''SV'') data to value TMI's factors of production. On July 11, 2011, DunAn and Sanhua submitted rebuttal SV comments on the June 21, 2011, submissions. On July 19, 2011, in conformity with the Department's revised wage rate methodology,[3] we placed on the record additional wage rate information for consideration in the final results, and requested parties to comment on that data.[4] None of the parties to this proceeding provided comments on the Department's wage rate data. We received the case briefs from all parties on August 16, 2011, and rebuttal briefs on August 22, 2011.

On August 24, 2011, the Department extended the deadline for the final results of review until November 5, 2011.[5] On September 8, 2011, DunAn and Sanhua each withdrew their request for a hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Frontseating Service Valves From the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2008–2010 Administrative Review, dated November 7, 2011 (''Issues and Decision Memorandum''),'' which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046, and is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Period of Review

The POR is October 22, 2008, through March 31, 2010.

Scope of the Order

The merchandise covered by this order is frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof. Frontseating service valves contain a sealing surface on the front side of the valve stem that allows the indoor unit or outdoor unit to be isolated from the refrigerant stream when the air conditioning or refrigeration unit is being serviced. Frontseating service valves rely on an elastomer seal when the stem cap is removed for servicing and the stem cap metal to metal seat to create this seal to the atmosphere during normal operation.[6]

For purposes of the scope, the term ''unassembled'' frontseating service valve means a brazed subassembly requiring any one or more of the following processes: The insertion of a valve core pin, the insertion of a valve stem and/or O ring, the application or installation of a stem cap, charge port cap or tube dust cap. The term ''complete'' frontseating service valve means a product sold ready for installation into an air conditioning or refrigeration unit. The term ''incomplete'' frontseating service valve means a product that when sold is in multiple pieces, sections, subassemblies or components and is incapable of being installed into an air conditioning or refrigeration unit as a single, unified valve without further assembly.

The major parts or components of frontseating service valves intended to be covered by the scope under the term ''certain parts thereof'' are any brazed subassembly consisting of any two or more of the following components: A valve body, field connection tube, factory connection tube or valve charge port. The valve body is a rectangular block, or brass forging, machined to be hollow in the interior, with a generally square shaped seat (bottom of body). The field connection tube and factory connection tube consist of copper or other metallic tubing, cut to length, shaped and brazed to the valve body in order to create two ports, the factory connection tube and the field connection tube, each on opposite sides of the valve assembly body. The valve charge port is a service port via which a hose connection can be used to charge or evacuate the refrigerant medium or to monitor the system pressure for diagnostic purposes.

The scope includes frontseating service valves of any size, configuration, material composition or connection type. Frontseating service valves are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States (''HTSUS''). It is possible for frontseating service valves to be

[1] *See Frontseating Service Valves from the People's Republic of China: Preliminary Results of the 2008–2010 Antidumping Duty Administrative Review and Partial Rescission of Review,* 76 FR 26686 (May 9, 2011) (''*Preliminary Results*'').

[2] *See Preliminary Results.*

[3] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011).

[4] *See* Memorandum to the File, ''Frontseating Service Valves from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratios,'' dated July 19, 2011.

[5] *See Frontseating Service Valves from the People's Republic of China: Extension of Time for the Final Results of the Antidumping Duty Administrative Review,* 76 FR 52935 (August 24, 2011).

[6] The frontseating service valve differs from a backseating service valve in that a backseating service valve has two sealing surfaces on the valve stem. This difference typically incorporates a valve stem on a backseating service valve to be machined of steel, where a frontseating service valve has a brass stem. The backseating service valve dual stem seal (on the back side of the stem), creates a metal to metal seal when the valve is in the open position, thus, sealing the stem from the atmosphere.

manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In addition, if unassembled or incomplete frontseating service valves are imported, the various parts or components would be classified under HTSUS subheadings 8481.90.1000, 8481.90.3000, or 8481.90.5000. The HTSUS subheadings are provided for convenience and customs purposes, but the written description of the scope of this proceeding is dispositive.

Rescission of Administrative Review in Part

In the *Preliminary Results,* the Department partially rescinded the review with respect to Tycon Alloy because it submitted a ''no shipment'' letter and our review of CBP import data did not contradict that information. Because Tycon Alloy is part of the PRC-wide entity, the Department stated that it would issue liquidation instructions for the PRC-wide entity, which includes Tycon Alloy, 15 days after the publication of these *Final Results.*[7]

Changes Since the Preliminary Results

Based on an analysis of the comments received, the Department has made certain changes in the margin calculation. For the final results, the Department has made the following changes:

- We revised the surrogate financial ratios for overhead, selling, general and administrative expenses and profit to account for our determination that the financial statements of Pyrocast India Private Limited (''Pyrocast'') alone represented the best information available on the record to value these ratios. *See* Comment 1 of the accompanying Issues and Decision Memorandum.
- We revised the valuation of brazing rings for Sanhua to account for the proportion of copper, silver and phosphorus recorded on a quality certificate that Sanhua provided with respect to brazing rings in its supplemental questionnaire response. *See* Comment 6 of the accompanying Issues and Decision Memorandum.
- We valued DunAn's brass bar processed by tollers using scrap provided by DunAn using publicly available data from an economically comparable country. *See* Comment 12 of the accompanying Issues and Decision Memorandum.
- Consistent with *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011), we have made revisions to the surrogate labor rate for the final results of this administrative review. For these final results, the surrogate labor rate has changed from US$1.04/hour to 80.14 Indian Rupees per hour. *See* Memorandum to the File, ''Frontseating Service Valves from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratios,'' dated July 19, 2011; *see also* Memorandum to the File, ''Antidumping Duty Administrative Review of Frontseating Service Valves from the People's Republic of China: Factor Valuation for the Final Results of Review,'' dated November 7, 2011.

Final Results Margin

We determine the weighted-average dumping margins for the period October 22, 2008, through March 31, 2010, to be:

FRONTSEATING SERVICE VALVES FROM THE PRC

Exporter	Weighted-average margin (percentage)
Zhejiang DunAn Hetian Metal Co. Ltd	9.42
Zhejiang Sanhua Co., Ltd	5.22

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For DunAn and Sanhua, the cash deposit rate will be the rate identified in the Final Results Margin section, as listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Tycon Alloy), the cash deposit rate will continue to be the PRC-wide rate of 55.62 percent;[8] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR

[7] Tycon Alloy was not previously assigned a separate rate from a prior segment of the proceeding. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976 (May 28, 2010); and *Preliminary Results,* 76 FR at 26693. The Department could not order liquidation for a company which, although no longer under review as an independent entity, might still be under review as part of the PRC-wide entity. *See Preliminary Results,* 76 FR at 26693; and, *Certain Steel Nails From the People's Republic of China: Notice of Extension of Time Limits and Partial Rescission of the Second Antidumping Duty Administrative Review,* 76 FR 23788 (April 28, 2011).

[8] This rate was established in the final results of the original investigation. *See Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009).

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

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

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 7, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues for the Final Results

Surrogate Values

Comment 1: Selection of Surrogate Financial Statements
Comment 2: Surrogate Value Data Source for Brass Bar
Comment 3: Whether to Include French Import Data to Value Brass Bar
Comment 4: Whether To Use the Average of HTS 7407.21.10 and HTS 7407.21.20 Import Values to Value Brass Bar
Comment 5: The Valuation of Valve Bodies
Comment 6: The Valuation of Brazing Rings
Comment 7: The Classification of Ammonia Gas
Comment 8: The Valuation of Labor
Comment 9: The Use of October 2008 GTA Data in the Calculation of Surrogate Values

Issues With Respect to DunAn

Comment 10: Rebates Paid on Sales to the United States
Comment 11: Freight Charges on U.S. Sales
Comment 12: The Use of Tollers' FOPs in the Calculation of NV

Issues With Respect to Sanhua

Comment 13: Upward Billing Adjustments
Comment 14: Brokerage and Handling Expense in the United States
Comment 15: Indirect Selling Expenses in the United States

General Issues

Comment 16: Zeroing
Comment 17: Procedures for Issuing Liquidation Instructions
Comment 18: By-Product Offset for Brass Scrap

[FR Doc. 2011–29498 Filed 11–14–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Second Extension of Time for the Final Results of the Antidumping Duty Administrative Review

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

DATES: *Effective Date:* November 15, 2011.

FOR FURTHER INFORMATION CONTACT: Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6231.

Background

On June 8, 2011, the Department of Commerce (''the Department'') published the preliminary results of this administrative review for the period May 1, 2009, to April 30, 2010. *See Pure Magnesium From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review,* 76 FR 33194 (June 8, 2011). On September 16, 2011, the Department extended the deadline to issue the final results.[1] The final results of review are currently due on November 21, 2011.

Extension of Time Limits for the Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. The Department determines that completion of the final results of the administrative review by the current deadline is not practicable. After interested parties submitted case and rebuttal briefs, the Department placed new information on the record[2] and allowed parties to submit comments thereon,[3] and received additional comments and information. The Department requires additional time to consider this information and argument.

Because it is not practicable to complete this review within the time specified under the Act, we are again extending the time period for issuing the final results of the administrative review by additional 15 days, or until December 5, 2011, in accordance with section 751(a)(3)(A) of the Act.

We are publishing this notice pursuant to sections 751(a) and 777(i) of the Act.

Dated: November 7, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–29499 Filed 11–14–11; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting; Emergency Meeting Notice

This notice that an emergency meeting was held is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: The Commission held an emergency closed meeting on November 9, 2011 at approximately 11:10 a.m. The Commission, by a recorded vote of 4–0, determined that the business of the agency required that the meeting be held at that time. The Chairman of the

[1] *See Pure Magnesium From the People's Republic of China: Extension of Time for the Final Results of the Antidumping Duty Administrative Review,* 76 FR 59111 (September 23, 2011).

[2] *See* the Department's Memorandum to the File, ''The 2006–2007 Financial Statements for Madras Aluminum Company (''MALCO'') and *Infobanc* Truck Freight Rate Data,'' dated October 4, 2011.

[3] *See* the Department's Memorandum to the File, ''Soliciting Comments on the 2006–2007 Financial Statements for Madras Aluminum Company (''MALCO'') and *Infobanc* Truck Freight Rate Data'' dated November 1, 2011.

Commission did not participate in this meeting.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Registrant Financial Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, Assistant Secretary of the Commission, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–29589 Filed 11–10–11; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council (MFRC); Change of Meeting Date and Time

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, on October 11, 2011 (76 FR 62787) the Department of Defense Military Family Readiness Council (MFRC), announced a meeting to be held on November 21, 2011. This notice announce that the meeting date and time has been changed to December 12, 2011, from 1 p.m. to 3 p.m. All other information in the original notice remains the same.

The meeting is open to the public, subject to the availability of space. Persons desiring to attend may contact Ms. Melody McDonald at (571) 256–1738 or email *FamilyReadinessCouncil@osd.mil* no later than 5 p.m. on Tuesday, December 6, 2011 to arrange for parking and escort into the conference room inside the Pentagon.

Interested persons may submit a written statement for consideration by the Council. Persons desiring to submit a written statement to the Council must notify the point of contact listed below no later than 5 p.m., Wednesday, December 7, 2011.

ADDRESSES: Pentagon Conference Center B6 (escorts will be provided from the Pentagon Metro entrance).

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4000 Defense Pentagon, Room 2E319, Washington, DC 20301–4000. Telephones (571) 256–1738; (703) 697–9283 and/or email: *FamilyReadinessCouncil@osd.mil*.

Dated: November 8, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–29371 Filed 11–14–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0123]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 15, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard, Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 8, 2011.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

Deletion
DUSDA 04

Request for Two-Year Foreign Residence Waiver Files (February 22, 1993, 58 FR 10227).

REASON:

Based on a recent review of DUSDA 04, Request for Two-Year Foreign Residence Waiver Files, (February 22, 1993, 58 FR 10227), it has been determined the system is no longer being used and all records have reached the record retention requirements and have been destroyed; therefore this system can now be deleted.

[FR Doc. 2011–29324 Filed 11–14–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army National Cemeteries Advisory Commission (ANCAC)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160), the Department of the Army announces the following committee meeting:

Name of Committee: Army National Cemeteries Advisory Commission.

Date of Meeting: Thursday, December 1, 2011.

Time of Meeting: 9 a.m.–4 p.m.

Place of Meeting: Women in Service to America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA.

Proposed Agenda: Purpose of the meeting is to finalize committee membership and appointment; formalize committee business rules, review proposed topics for review and discussion and set the proposed calendar for follow-on meetings.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Renea Yates; *renea-yates@us.army.mil* or 571.256.4325.

SUPPLEMENTARY INFORMATION: The following topics are on the initial agenda for discussion:

- Active burial space at Arlington National Cemetery
- Section 60 Mementos study
- Preserving the Tomb of the Unknown Soldier

The Commission's mission is to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on the Army National Cemeteries Program, including, but not limited to:

a. Management and operational issues, including bereavement practices;

b. Plans and strategies for addressing long-term governance challenges;

c. Resource planning and allocation; and

d. Any other matters relating to Army National Cemeteries that the Commission's co-chairs, in consultation with the Secretary of the Army, may decide to consider.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement for consideration by the Commission. Written statements must be received by the Designated Federal Officer at the following address: Army National Cemeteries Advisory Commission, attn: Designated Federal Officer (DFO) (LTC Yates), Arlington National Cemetery, Arlington, Virginia 22211 not later than 5 p.m., Monday, November 28, 2011. Written statements received after this date may not be provided to or considered by the Army National Cemeteries Advisory Commission until the next open meeting. The Designated Federal Officer will review all timely submissions with the Commission Chairperson and ensure they are provided to the members of the Army National Cemeteries Advisory Commission.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–29411 Filed 11–14–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: These appointments are effective as of September 30, 2011.

ADAMS, VINCENT NMN
ALLISON, JEFFREY M
AMARAL, DAVID M
ANDERSON, CYNTHIA V
AOKI, STEVEN NMN
ARANGO III, JOSEPH NMN
ASCANIO, XAVIER NMN
AZAR, LAUREN L
BAKER, KENNETH E
BARHYDT, LAURA L
BARKER JR, WILLIAM L
BARWELL, OWEN F
BATTERSHELL, CAROL J
BEAMON, JOSEPH A
BEARD, JEANNE M
BEARD, SUSAN F
BEAUSOLEIL, GEOFFREY L
BEKKEDAHL, LARRY N
BELL, MELODY C
BIENIAWSKI, ANDREW J
BIERBOWER, WILLIAM J
BISHOP, CLARENCE T
BISHOP, TRACEY L
BLACK, STEVEN K
BOARDMAN, KAREN L
BODI, F LORRAINE
BONILLA, SARAH J
BORGSTROM, CAROL M
BOSCO, PAUL NMN
BOULDEN III, JOHN S
BOWHAN, BRETT R
BOYD, DAVID O
BOYKO, THOMAS R
BOYLE, WILLIAM J
BREMER, JOHN D
BRESE, ROBERT F
BREWER, STEPHANIE J
BROMBERG, KENNETH M
BROTT, MATTHEW J
BROWN, DAVID S
BROWN, FRED L
BROWN, STEPHANIE H
BRUCE, SANDRA D
BRYAN, PAUL F
BRYAN, WILLIAM N
BURROWS, CHARLES W
BUTTRESS, LARRY D
BUZZARD, CHRISTINE M
CADIEUX, GENA E
CALBOS, PHILIP T
CALLAHAN, SAMUEL N
CAMPAGNONE, MARI-JOSETTE N
CAMPBELL II, HUGH T
CANNON, SCOTT C
CAROSINO, ROBERT M
CAVANAGH, JAMES J
CERVENY, THELMA J
CHABAY, JOHN E
CHALK, STEVEN G
CHARBONEAU, STACY L
CHECK, PETER L
CHOI, JOANNE Y
CHRISTODOULOU, LEONTIOS NM
CHUNG, DAE Y
CLAPPER, DANIEL R
CLARK, DIANA D
CLINTON, RITA M
COHEN, DANIEL NMN
COLLARD, GEORGE W
COLLAZO, YVETTE T
CONTI, JOHN J
COOPER, JAMES R
CORBIN, ROBERT F
COREY, RAY J
COSTLOW, BRIAN D
CRAIG JR, JACKIE R
CRANDALL, DAVID H
CRAWFORD, GLEN D
CROUTHER, DESI A
CUGINI, ANTHONY V
CUTLER, THOMAS RUSSELL
DAVENPORT, SHARI T
DAVIS, KIMBERLY A
DAVIS, PATRICK B
DEAROLPH, DOUGLAS J
DECKER, ANITA J
DEENEY, CHRISTOPHER NMN
DEHAVEN, DARREL S
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO NMN
DELHOTAL, KATHERINE CASEY
DELWICHE, GREGORY K
DETWILER, RALPH P
DIAMOND, BRUCE M
DICAPUA, MARCO S
DIFIGLIO, CARMEN NMN
DIKEAKOS, MARIA V
DIXON, ROBERT K
DOWELL, JONATHAN A
DUKE JR, RICHARD D
ECKROADE, WILLIAM A
EHLI, CATHY L
ELKIND, JONATHAN H
ELY, LOWELL V
ERHART, STEVEN C
ESCHENBERG, JOHN R
FERRARO, PATRICK M
FLOHR, CONNIE M
FLYNN, KAREN L
FRANCO JR., JOSE R
FRANKLIN, RITA R
FRANTZ, DAVID G
FREMONT, DOUGLAS E

FRESCO, MARY ANN E
FURRER, ROBIN R
FURSTENAU, RAYMOND V
FYGI, ERIC J
GARCIA, DONALD J
GASPEROW, LESLEY A
GEERNAERT, GERALD L
GEISER, DAVID W
GELLES, CHRISTINE M
GENDRON, MARK O
GERRARD, JOHN E
GIBBS, ROBERT C
GIBSON JR, WILLIAM C
GILBERTSON, MARK A
GILLO, JEHANNE E
GOLAN, PAUL M
GOLDSMITH, ROBERT NMN
GOLUB, SAL JOSEPH
GOODRUM, WILLIAM S
GOODWIN, KARL E
GORDON, THEANNE E
GREENAUGH, KEVIN C
GREENWOOD, JOHNNIE D
GROF-TISZA, LAJOS E
GRUENSPECHT, HOWARD K
GUEVARA, ARNOLD E
GUEVARA, KAREN C
HALE, ANDREW M
HALLMAN, TIMOTHY J
HANDWERKER, ALAN I
HANNIGAN, JAMES J
HARDWICK JR, RAYMOND J
HARMS, TIMOTHY C
HARP, BENTON J
HARRELL, JEFFREY P
HARRINGTON, PAUL G
HARRIS, ROBERT J
HARROD, WILLIAM J
HARTMAN, JOHN R
HARVEY, STEPHEN J
HASS, RICKEY R
HELD, EDWARD B
HENDERSON III, CLYDE H
HENNEBERGER, KAREN O
HENNEBERGER, MARK W
HERCZEG, JOHN W
HERRERA, C ROBERT D
HILL, JOANNE NMN
HINE, SCOTT E
HINTZE, DOUGLAS E
HITCHCOCK, DANIEL A
HOAG, DANIEL KEITH
HOFFMAN, DENNIS J
HOGAN, KATHLEEN B
HOLECEK, MARK L
HOLLAND, MICHAEL D
HOLLAND, MICHAEL J
HOLLETT, DOUGLAS W
HOLLRITH, JAMES W
HORTON, LINDA L
HOWARD, MICHAEL F
HOWELL JR, J T
HUIZENGA, DAVID G
HURLBUT, BRANDON K
JENKINS, AMELIA F
JOHNS, CHRISTOPHER S
JOHNSON JR, THOMAS NMN
JOHNSON, DAVID F
JOHNSON, ROBERT SHANE
JOHNSON, SANDRA L
JONAS, DAVID S
JONES, GREGORY A
JONES, MARCUS E
JONES, WAYNE NMN
JUJ, HARDEV S
KAEMPF, DOUGLAS E
KANE, MICHAEL C
KAPLAN, STAN M
KAUFFMAN, RICHARD L
KEARNEY, JAMES H
KELLY, HENRY C
KELLY, JOHN E
KELLY, LARRY C
KENCHINGTON, HENRY S
KENDELL, JAMES M
KETCHAM, TIMOTHY E
KHAN, TARIQ M
KIGHT, GENE H
KIM, DONG K
KIMBERLING, LINDA S
KLARA, SCOTT M
KLAUSING, KATHLEEN A
KLING, JON NMN
KNOELL, THOMAS C
KNOLL, WILLIAM S
KOLB, INGRID A C
KOURY, JOHN F
KROL, JOSEPH J
KUNG, HUIJOU HARRIET
KUSNEZOV, DIMITRI F
LAGDON JR, RICHARD H
LAWRENCE, ANDREW C
LAWRENCE, STEVEN J
LEATHLEY, KIMBERLY A
LECKEY, THOMAS J
LEE, TERRI TRAN
LEGG, KENNETH E
LEHMAN, DANIEL R
LEIFHEIT, KEVIN R
LEISTIKOW, DANIEL A
LEMPKE, MICHAEL K
LENHARD, JOSEPH A
LERSTEN, CYNTHIA A
LEV, SEAN A
LEVITAN, WILLIAM M
LEWIS III, CHARLES B
LEWIS, ROGER A
LINGAN, ROBERT M
LIVENGOOD, JOANNA M
LOCATIS III, MICHAEL W
LOCKWOOD, ANDREA K
LOWE, OWEN W
LOYD, RICHARD NMN
LUCAS, JOHN T
LUCZAK, JOANN H
LUSHETSKY, JOHN M
LYNCH, TIMOTHY G
MACINTYRE, DOUGLAS M
MAINZER, ELLIOT E
MALOSH, GEORGE J
MARCINOWSKI III, FRANCIS N
MARLAY, ROBERT C
MARMOLEJOS, POLI A
MCARTHUR, BILLY R
MCBREARTY, JOSEPH A
MCCLOUD, FLOYD R
MCCONNELL, CHARLES D
MCCONNELL, JAMES J
MCCORMICK, MATTHEW S
MCGINNIS, EDWARD G
MCGUIRE, PATRICK W
MCKEE, BARBARA N
MCKENZIE, JOHN M
MCRAE, JAMES BENNETT
MEACHAM, A AVON
MEEKS, TIMOTHY J
MELLINGTON, STEPHEN A
MELLINGTON, SUZANNE P
MILLIKEN, JOANN NMN
MINVIELLE, THOMAS M
MIOTLA, DENNIS M
MOE, DARRICK C
MOLLOT, DARREN J
MONETTE, DEBORAH D
MONTOYA, ANTHONY H
MOODY III, DAVID C
MOORE, JOHNNY O
MOORER, RICHARD F
MOREDOCK, J EUN
MORTENSON, VICTOR A
MUELLER, TROY J
MURPHIE, WILLIAM E
MUSTIN, TRACY P
NAPLES, ELMER M
NASSIF, ROBERT J
NAVIN, JEFFREY M
NEWMAN, LARRY NMN
NICOLL, ERIC G
NIEDZIELSKI-EICHNER, P A
O'CONNOR, STEPHEN C
O'CONNOR, THOMAS J
O'KONSKI, PETER J
OLENCZ, JOSEPH NMN
OLINGER, SHIRLEY J
OLIVER, LEANN M
OLIVER, STEPHEN R
OSBORN II, ROBERT J
OSHEIM, ELIZABETH L
OTT, MERRIE CHRISTINE
OWENDOFF, JAMES M
PARNES, SANFORD J
PAVETTO, CARL S
PEARSON, VIRGINIA A
PENRY, JUDITH M
PERSON JR, GEORGE L
PETERSON, BRADLEY A
PHAN, THOMAS H
PODONSKY, GLENN S
PORTER, STEVEN A
POSTON, BRADLEY J
POWELL, CYNTHIA ANN
POWERS, KENNETH W
PROCARIO, MICHAEL P
PROVENCHER, RICHARD B
PURUCKER, ROXANNE E
RAINES, ROBERT B
RAMSEY, CLAY HARRISON
RHODERICK, JAY E
RICHARDS, AUNDRA M
RICHARDSON, SUSAN S
RISSER, ROLAND J
ROACH, RANDY A
RODGERS, DAVID E
RODGERS, STEPHEN J
ROEGE, WILLIAM H
ROHLFING, ERIC A
SALMON, JEFFREY T

SAMUELSON, SCOTT L
SATYAPAL, SUNITA NMN
SCHAAL, ALFRED MICHAEL
SCHEINMAN, ADAM M
SCHOENBAUER, MARTIN J
SCHUNEMAN, PATRICIA J
SCOTT, RANDAL S
SEDILLO, DAVID NMN
SENA, RICHARD F
SHEELY, KENNETH B
SHEPPARD, CATHERINE M
SHERRY, THEODORE D
SHOOP, DOUG S
SHORT, STEPHANIE A
SILVER, JONATHAN M
SILVERSTEIN, BRIAN L
SIMONSON, STEVEN C
SKUBEL, STEPHEN C
SMITH, CHRISTOPHER A
SMITH, KEVIN W
SMITH, THOMAS Z
SMITH-KEVERN, REBECCA F
SNIDER, ERIC S
SNIDER, LINDA J
SNYDER, ROGER E
SPEARS, TERREL J
SPERLING, GILBERT P
STAKER, THOMAS R
STALLMAN, ROBERT M
STARK, RICHARD M
STEARRETT, BARBARA H
STENSETH, WILLIAM LYNN
STEPHENSON, APRIL G
STONE, BARBARA R
STONE, RUTH RENEE
STRAYER, MICHAEL R
STREIT, LISA D
STUCKY, JEAN SEIBERT
SURASH, JOHN E
SWEETNAM, GLEN E
SYKES, MERLE L
SYNAKOWSKI, EDMUND J
TALBOT JR, GERALD L
THOMPSON, MICHAEL A
THRESS JR, DONALD F
TOCZKO, JAMES E
TOMER, BRADLEY J
TRAUTMAN, STEPHEN J
TRIAY, INES R
TUCKER, CRAIG A
TURNER, SHELLEY P
TURNURE, JAMES T
TYNER, TERESA M
UNRUH, TIMOTHY D
URIE, MATTHEW C
VALDEZ, WILLIAM J
VAN DAM, JAMES W
VAVOSO, THOMAS G
VEGA, GILBERT NMN
VENUTO, KENNETH T
VILLAR, JOSE A
WADDELL, JOSEPH F
WAGNER, M PATRICE
WAISLEY, SANDRA L
WARD, GARY K
WARNICK, WALTER L
WARREN, BRADLEY S
WEATHERWAX, SHARLENE C
WEEBER, DANIEL M
WEEDALL, MICHAEL J
WEIS, MICHAEL J
WELLING, DAVID CRAIG
WESTON-DAWKES, ANDREW P
WHITNEY, JAMES M
WILBER, DEBORAH A
WILCHER, LARRY D
WILLIAMS JR, MELVIN G
WILLIAMS, ALICE C
WILLIAMS, RHYS M
WILLIAMS, THOMAS D
WILSON JR, THOMAS NMN
WINTERS, MATTHEW A
WOOD, JAMES F
WORLEY, MICHAEL N
WORTHINGTON, JON C
WORTHINGTON, PATRICIA R
WRIGHT, STEPHEN J
WYKA JR, THEODORE A
YOSHIDA, PHYLLIS G
ZABRANSKY, DAVID K
ZAMORSKI, MICHAEL J
ZEH, CHARLES M
ZIEMIANSKI, EDWARD J

Issued in Washington, DC, November 2, 2011.

Sarah J. Bonilla,

Director, Office of Human Capital Management.

[FR Doc. 2011–29464 Filed 11–14–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy.

DATES: This appointment is effective as of September 30, 2011.

Susan F. Beard

Issued in Washington, DC, November 2, 2011.

Sarah J. Bonilla,

Director, Office of Human Capital Management.

[FR Doc. 2011–29465 Filed 11–14–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14308–000]

Carbon Zero, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 14308–000.

c. *Date Filed:* October 24, 2011.

d. *Applicant:* Carbon Zero, LLC.

e. *Name of Project:* Vermont Tissue Mill Hydroelectric Project.

f. *Location:* On the Walloomsac River, in the Town of Bennington, Bennington County, Vermont. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* William F. Scully, Carbon Zero, LLC, P.O. Box 338, North Bennington, VT 05257; (802) 442–0311; *wfscully@gmail.com.*

i. *FERC Contact:* Amy K. Chang, (202) 502–8250 or *Amy.Chang@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: December 23, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY,

contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. Vermont Mill Tissue Hydroelectic Project would consist of two existing dams separated by a 400-foot-long island and include: (1) An 85-foot-long, 15-foot-high principal dam with an uncontrolled spillway topped by 4-inch-high replaceable flashboards; (2) an 80-foot-long, 15.3-foot-high dam with an emergency spillway; (3) an existing 6-foot-high by 6-foot-wide clean-out gate located under the spillway of the principal dam; (4) an existing 6.4-acre impoundment with a normal water surface elevation of 550 feet above mean sea level; (5) an existing intake structure equipped with one 12-foot-high by 9-foot-long and three 12-foot-high by 12-foot-long headgates and trashracks connected to two water conveyance channels, one 50 feet long and one 75 feet long; (6) an existing powerhouse with three new turbine generating units with a total installed capacity of 349 kilowatts; and (7) a new 100-foot-long transmission line. In addition to installing the new turbine generating units and new transmission line listed above, the applicant proposes to renovate and repair the trashracks and tailrace retaining wall, and excavate a new tailrace downstream of the principal dam. The project would be operated in a run-of-river mode and would generate an annual average of approximately 1,257 megawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Vermont State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (e.g., if scoping is waived, the schedule would be shortened).

Issue Deficiency Letter	January 2012.
Issue Notice of Acceptance	March 2012.
Issue Scoping Document	March 2012.
Issue Notice ready for environmental analysis.	May 2012.
Issue Notice of the availability of the EA.	October 2012.

Dated: November 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29352 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3043–016]

Arkansas Electric Cooperative Corporation and The Bank of New York Mellon, as Owner Trustee; Notice of Application for Partial Transfer of License, and Soliciting Comments and Motions To Intervene

On October 27, 2011, Arkansas Electric Cooperative Corporation (AECC) and The Bank of New York Mellon, as Owner Trustee (co-licensee) filed an application for transfer of license for the Arkansas River Lock and Dam No. 13, Hydroelectric Project No. 3043, located on the Arkansas River in Crawford County, Arkansas.

Applicants seek Commission approval to transfer the license for the Arkansas River Lock and Dam No. 13 Hydroelectric Project from The Bank of New York Mellon, as Owner Trustee, co-licensee to AECC as sole licensee.

Applicants' Contact: AECC: Robert M. Lyford, Senior Vice President and General Counsel, Arkansas Electric Cooperative Corporation, P.O. Box 194208, Little Rock, AR 72219–4208, (501) 570–2268 and Sean T. Beeny, Jeffrey K. Janike, Miller, Balis & O'Neill, P.C., 1015 15th Street, NW., 12th Floor, Washington, DC 20005, (202) 296–2960. *Co-licensee:* The Bank of New York Mellon, c/o the Bank of Mellon Trust Company, N.A., 700 South Flower Street, Suite 500, Los Angeles, CA 90019, *Attention:* Corporate Unit.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 20 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–3043) in the docket number field to access the document. For assistance, call toll-free 1–(866) 208–3372.

Dated: November 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29353 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos., P–349–174; P–2407–140]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for drought-based temporary variance of the Martin Project rule curve and minimum flow releases at the Yates and Thurlow Project.

b. *Project Nos.:* 349–174 and 2407–140.

c. *Date Filed:* November 4, 2011.

d. *Applicant:* Alabama Power Company.

e. *Name of Projects:* Martin Hydroelectric Project (P–349) and Yates and Thurlow Hydroelectric Project (P–2407).

f. *Location:* The Martin Dam Project is located on the Tallapoosa River in the counties of Coosa, Elmore, and Tallapoosa, Alabama. The Yates and

Thurlow Project is located on the Tallapoosa River in the counties of Elmore and Tallapoosa, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Barry Lovett, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291, Tel: (205) 257–1000.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *Christopher.Chaney@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 14 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–349–174 and P–2407–140) on any documents or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power is requesting a drought-based temporary variance to the Martin Project rule curve. The rule curve variance would be in effect from the date of Commission approval to March 1, 2012, and would allow the licensee to maintain the winter pool elevation 3 feet higher than normal, at elevation 483 feet instead of elevation 480 feet. In association with the Martin rule curve variance, the minimum flows from the Thurlow reservoir (P–2407) would be temporarily modified as follows until May 1, 2012: (1) When downstream Alabama River flows are reduced 10%, discharge would be the greater of ½ Yates inflow or 2 times inflow at the upstream Heflin gage; (2) when downstream Alabama River flows are reduced 20%, the discharge would be 350 cfs; and (3) if Alabama River flows are reduced to 2400 dsf, the discharge would be 400 cfs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29401 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–22–000.

Applicants: Golden Winds Holding, LLC.

Description: Golden Winds Holding, LLC Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action.

Filed Date: 11/04/2011.

Accession Number: 20111104–5217.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: EC12–23–000.

Applicants: Entergy Nighthawk LP, LLC, Entergy Nighthawk GP, LLC, FPLE Rhode Island State Energy, L.P., FPLE Rhode Island State Energy GP, Inc., FPLE Rhode Island State Energy LP, LLC.

Description: Application of FPLE Rhode Island State Energy, L.P., et al. for Section 203 Authorization.

Filed Date: 11/04/2011.

Accession Number: 20111104–5222.

Comment Date: 5 p.m. ET on 11/25/2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1286–005; ER09–1287–005; ER10–1362–002; ER11–3620–001; ER11–2882–002; ER05–1218–006; ER05–1219–006; ER96–149–015; ER10–71–003; ER00–2887–009; ER06–703–005; ER07–1341–006.

Applicants: York Generation Company LLC, Dartmouth Power Associates Limited Partnership, Camden Plant Holding, L.L.C., Newark Bay Cogeneration Partnership, L.P, Elizabethtown Energy, LLC, Lumberton Energy, LLC, Lyonsdale Biomass, LLC, Elmwood Park Power LLC, Hatchet Ridge Wind, LLC, Pedricktown Cogeneration Company LP, ReEnergy Sterling CT Limited Partnership, Bayonne Plant Holding, L.L.C.

Description: Notification of Non-Material Change in Status.

Filed Date: 11/04/2011.

Accession Number: 20111104–5225.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER10–2651–002.

Applicants: Lockhart Power Company.

Description: Lockhart Power Company submits an Asset Appendix.

Filed Date: 11/04/2011.

Accession Number: 20111104–5070.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER10–2881–002; ER10–2882–002; ER10–2883–002; ER10–2884–002; ER10–2885–002; ER10–2641–002; ER10–2663–002; ER10–2886–002.

Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, LP, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC.

Description: Supplement to Updated Market Power Analysis of Southern Companies and their affiliates for the Southeast Region.

Filed Date: 11/04/2011.

Accession Number: 20111104–5182.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–354–000.

Applicants: Carolina Power & Light Company.

Description: Rate Schedule No. 121 of Carolina Power and Light Company to be effective 1/4/2012.

Filed Date: 11/04/2011.

Accession Number: 20111104–5090.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–355–000.

Applicants: Carolina Power & Light Company.

Description: Rate Schedule No. 191 of Carolina Power and Light Company to be effective 1/4/2012.

Filed Date: 11/04/2011.

Accession Number: 20111104–5094.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–356–000.

Applicants: Florida Power & Light Company.

Description: FPL Revision to Attachment H of the FPL OATT to be effective 11/30/2011.

Filed Date: 11/04/2011.

Accession Number: 20111104–5185.

Comment Date: 5 p.m. ET on 11/18/2011.

Docket Numbers: ER12–357–000.

Applicants: PacifiCorp.

Description: PAC Energy NITSA Rev 10 to be effective 10/28/2011.

Filed Date: 11/04/2011.

Accession Number: 20111104–5197.

Comment Date: 5 p.m. ET on 11/25/2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 7, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–29393 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1734–002.

Applicants: MXenergy Electric Inc.

Description: Notice of Change in Status of MXenergy Electric Inc.

Filed Date: 11/04/2011.

Accession Number: 20111104–5079.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER11–3420–003.

Applicants: Gridway Energy Corp.

Description: Supplemental Change in Status Notice to be effective 11/4/2011.

Filed Date: 11/04/2011.

Accession Number: 20111104–5023.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER11–4658–001.

Applicants: E Minus LLC.

Description: Amended Rate Schedule to be effective 11/4/2011.

Filed Date: 11/03/2011.

Accession Number: 20111103–5126.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER11–4665–002.

Applicants: North Branch Resources, LLC.

Description: Supplement to Category 1 Status Designation Request to be effective 11/4/2011.

Filed Date: 11/04/2011.

Accession Number: 20111104–5025.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER11–4721–001.

Applicants: New Hope Power Partnership.

Description: Revised New Hope FERC Electric Tariff Baseline Filing to be effective 11/4/2011.

Filed Date: 11/04/2011.

Accession Number: 20111104–5054.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–347–000.

Applicants: DB Energy Trading LLC.

Description: Rate Schedule FERC No. 1 Revision to be effective 11/3/2011.

Filed Date: 11/03/2011.

Accession Number: 20111103–5092.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–348–000.

Applicants: Mercuria Energy America, Inc.

Description: FERC Electric Baseline Tariff Filing to be effective 12/1/2011.

Filed Date: 11/03/2011.

Accession Number: 20111103–5093.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–349–000.

Applicants: Atlantic Path 15, LLC.

Description: Appendix I—Annual Update of the TRBAA to be effective 1/1/2012.

Filed Date: 11/03/2011.

Accession Number: 20111103–5125.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–350–000.

Applicants: Wolverine Trading, LLC.

Description: Wolverine Trading, LLC, FERC Electric MBR Tariff to be effective 11/4/2011.

Filed Date: 11/03/2011.

Accession Number: 20111103–5127.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–351–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 11–03–11 MRES Attachments O, GG, and MM to be effective 1/1/2012 under ER12–351.

Filed Date: 11/03/2011.

Accession Number: 20111103–5131.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–352–000.

Applicants: Southern California Edison Company.

Description: SGIA WDT SERV AG SCE–Littlerock SGF1 Project to be effective 11/5/2011.

Filed Date: 11/04/2011.

Accession Number: 20111104–5005.

Comment Date: 5 p.m. ET on 11/25/2011.

Docket Numbers: ER12–353–000.

Applicants: Sconza Candy Company.

Description: Notice of cancellation of Sconza Candy Company.

Filed Date: 11/03/2011.

Accession Number: 20111103–5166.

Comment Date: 5 p.m. ET on 11/25/2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 4, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–29394 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–549–000]

DCP Midstream, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed LaSalle Pipeline Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the LaSalle Pipeline Project involving construction and operation of facilities by DCP Midstream, LP (DCP) in Weld County, Colorado. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on December 8, 2011.

Comments may be submitted in written form. Further details on how to submit written comments are provided in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice DCP provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

DCP proposes to construct and operate approximately 11.3 miles of 12.75-inch-diameter natural gas pipeline in Weld County, Colorado. The LaSalle Pipeline Project (Project) would provide about 230 million standard cubic feet of natural gas per day to the markets in Colorado and neighboring areas. According to DCP, its project would reduce the strain and continue servicing the needs of several exploration and production companies in providing needed infrastructure to gather, process, and distribute new natural gas supplies.

The Project would consist of the following facilities:

- approximately 11.3 miles of 12.75-inch-diameter natural gas pipeline;
- one pig [1] launcher and receiver; and
- one block valve;

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 106.67 acres of land for the aboveground facilities and the pipeline. Following construction, about 0.35 acre would be maintained for permanent operation of the Project's facilities; the remaining acreage would be restored and allowed to revert to former uses. The proposed Project route would share a 50-foot-wide permanent easement with a newly constructed non-jurisdictional gathering pipeline, located approximately 10 feet south of the proposed Project alignment. Locations for contractor and/or pipe yards have yet to be identified.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and

[1] A ''pig'' is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- socioeconomics;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before December 8, 2011

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–549–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an

intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–549). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29400 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13994–001]

Public Utility District No. 1 of Snohomish County; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13994–001.

c. *Date Filed:* September 9, 2011.

d. *Submitted by:* Public Utility District No. 1 of Snohomish County (Snohomish PUD).

e. *Name of Project:* Hancock Creek Hydroelectric Project.

f. *Location:* On Hancock Creek, in King County, Washington. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Kim D. Moore, Assistant General Manager of Generation, Water, and Corporate Services; Public Utility District No. 1 of Snohomish County; 2320 California Street; P.O. Box 1107; Everett, WA 98206–1107; (425) 783–8606; email: *KDMoore@snopud.com.*

i. *FERC Contact:* Kelly Wolcott at (202) 502–6480; or email at *kelly.wolcott@ferc.gov.*

j. Snohomish PUD No. 1 filed its request to use the Traditional Licensing Process on September 9, 2011. Snohomish PUD provided public notice of its request on September 8, 2011. In a letter dated November 7, 2011, the Director of the Division of Hydropower Licensing approved Snohomish PUD's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Washington State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Snohomish PUD as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Snohomish PUD filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29406 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13948–001]

Public Utility District No. 1 of Snohomish County; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13948–001.

c. *Date Filed:* September 9, 2011.

d. *Submitted By:* Public Utility District No. 1 of Snohomish County (Snohomish PUD).

e. *Name of Project:* Calligan Creek Hydroelectric Project.

f. *Location:* On Calligan Creek, in King County, Washington. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. Potential *Applicant Contact:* Kim D. Moore, Assistant General Manager of Generation, Water, and Corporate Services; Public Utility District No. 1 of Snohomish County; 2320 California Street; P.O. Box 1107; Everett, WA 98206–1107; (425) 783–8606; email: *KDMoore@snopud.com.*

i. *FERC Contact:* Kelly Wolcott at (202) 502–6480; or email at *kelly.wolcott@ferc.gov.*

j. Snohomish PUD No. 1 filed its request to use the Traditional Licensing Process on September 9, 2011. Snohomish PUD provided public notice of its request on September 8, 2011. In a letter dated November 7, 2011, the Director of the Division of Hydropower

Licensing approved Snohomish PUD's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Washington State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Snohomish PUD as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Snohomish PUD filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1-(866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29405 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14228–000]

Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 15, 2011, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Avalon Tidal Energy Project, which would be located on the Ingram Thoroughfare in Cape May County, New Jersey. The proposed project would not use a dam or impoundment. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Installation of 10 to 30 NC Sea Dragon or Red Hawk tidal turbines at a rated capacity of 100 kilowatts, (2) an estimated 700 meters in length of additional transmission infrastructure, and (3) appurtenant facilities. The project is estimated to have an annual minimum generation of 3,504,000 kilowatt-hours with the installation of 10 units.

Applicant Contact: Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, (845) 691–4009.

FERC Contact: Woohee Choi (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14228–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29407 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14303–000]

KC LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 11, 2011, KC LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Tinemaha Hydropower Project (project) to be located at Tinemaha dam and reservoir on the Owens River, three miles south of Big Pine in Inyo County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of (1) the existing Los Angeles Department of Water and Power Tinemaha reservoir earth fill dam; (2) the existing Tinemaha reservoir with a surface area of 2,098 acres and a storage capacity of 16,405 acre-feet at a normal surface elevation of 3,871 feet msl; (3) a 200-foot-long, 72-inch-diameter steel penstock; (4) a

powerhouse with a 0.4 megawatt Kaplan generating unit, (5) a one-mile-long, 25 kilovolt primary transmission line; and (6) appurtenant facilities. The proposed project would have an estimated annual production of 1.5 gigawatt-hours.

Applicant Contact: Ms. Kelly W. Sackheim, Principal—KC LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628; phone: (301) 401–5978.

FERC Contact: Joseph Hassell; phone: (202) 502–8079.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14303–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary

[FR Doc. 2011–29399 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM09–2–001]

Contract Reporting Requirements of Intrastate Natural Gas Companies; Notice of Availability of Form 549D Quarterly Reports for Q1 and Q2 2011

The Commission is making available to the public the Form No. 549D—Quarterly Transportation & Storage Reports for Intrastate Natural Gas and Hinshaw Pipelines for the first and second quarters of 2011. The data are located on the Commission's Web site at *http://eformspublic.ferc.gov/.*

The public may search and download the entire database for all quarters or specific quarters or for specific companies. As future quarterly reports are filed with the Commission, they will also be available on the Commission's Web site after the deadline for filing.

Any questions or comments regarding the data should be sent to the *Form549D@ferc.gov* mail box.

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29403 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–5–000]

Voltage Coordination on High Voltage Grids; Notice of Staff Workshop

Take notice that the Federal Energy Regulatory Commission will hold a Workshop on Voltage Coordination on High Voltage Grids on Thursday, December 1, 2011 from 9 a.m. to 4:30 p.m. This staff-led workshop will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The workshop will be open for the public to attend and advance registration is not required.

The Commission is interested in better understanding the interaction between voltage control, reliability, and economic dispatch. In addition, the Commission will consider how improvements to dispatch and voltage control software could improve reliability and market efficiency. The workshop will address how entities currently coordinate economic dispatch and voltage control and the capability of existing and emerging software to improve coordination and optimization of transfer capability across the Bulk-Power System from a reliability and economic perspective.

The agenda for this workshop will be issued at a later date. Information will be posted on the calendar page for this event on the Commission's web site, *http://www.ferc.gov,* prior to the event. This event will not be Web cast nor transcribed.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–(866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: November 8, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–29404 Filed 11–14–11; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, November 17, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of October 20, 2011.

Draft Advisory Opinion 2011–19: Social Financial, Inc. d/b/a GivingSphere.

Agency Procedure for Notice to Named Respondents in Enforcement Matters of Additional Material Facts and/or Additional Potential Violations.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2011–29574 Filed 11–10–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE & TIME: Wednesday, November 9, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This Meeting Was Closed to the Public.

ITEMS TO BE DISCUSSED:

Internal personnel rules and procedures or matters affecting a particular employee.

Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–29599 Filed 11–10–11; 4:15 pm]

BILLING CODE 6715–01–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 November 29, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *David M. Heuberger, Hampton, Iowa,* to gain control of A.M. Saylor, Inc., Hampton, Iowa, and thereby indirectly First National Bank of Hampton, Hampton, Iowa, following his appointment as Co-Trustee for the Marcia Saylor Mekelburg Trust under Agreement and the A.M. Saylor Residuary Trust f/b/o Marcia Saylor Mekelburg Trust under Agreement.

Board of Governors of the Federal Reserve System, November 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–29422 Filed 11–14–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 2011.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Sumitomo Mitsui Financial Group, Inc. and Sumitomo Mitsui Banking Corporation, both of Tokyo, Japan,* to increase their ownership interest to 9.9 percent of the voting shares of The Bank of East Asia, Limited, Hong Kong S.A.R., Peoples Republic of China, and thereby indirectly increase their interest in The Bank of East Asia (U.S.A.), N.A., New York, New York.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Financial Services Holding Corporation, Henderson, Kentucky;* to become a bank holding company by acquiring 100 percent of The Bank of Henderson, Inc., Henderson, Kentucky.

Board of Governors of the Federal Reserve System, November 9, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–29423 Filed 11–14–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0097]

Healthcare Technology Holdings, Inc.; Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

Correction

In notice document 2011–28497 appearing on pages 68189–68191 in the issue of Thursday, November 3, 2011, make the following corrections:

1. On page 68189, in the second column, in the third through fifth lines, the Web site link should read *''https://ftcpublic.commentworks.com/ftc/imssdihealthconsent''.*

2. On the same page, in the third column, in the second full paragraph, seventh through ninth lines, the Web site link should read *''https://ftcpublic.commentworks.com/ftc/imssdihealthconsent''.*

[FR Doc. C1–2011–28497 Filed 11–14–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Co-Sponsors for the Office of Healthcare Quality's Programs To Strengthen Coordination and Impact of National Efforts in the Prevention of Healthcare-Associated Infections

AGENCY: Department of Health and Human Services, Office of the Secretary,

Office of the Assistant Secretary for Health, Office of Healthcare Quality.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS), Office of the Secretary (OS), Office of the Assistant Secretary for Health (ASH), Office of Healthcare Quality (OHQ) announces the opportunity to collaborate with HHS. HHS invites public and private professional health related organizations to participate as collaborating co-sponsors in the development and implementation of an innovative program that implements the HHS Action Plan to Prevent Healthcare-Associated Infections (HHS Action Plan), found at *http://www.hhs.gov/ash/initiatives/hai/actionplan/index.html,* by using appropriate strategies to achieve one or more of the nine targets for the priority areas identified in the HHS Action Plan, for example, a 50 percent reduction in central line-associated bloodstream infections (CLABSI) by the end of 2013. A ''co-sponsorship'' refers to the joint development of a program or event related to the goals and objectives of the HHS Action Plan and excludes programs or events that would require funding for their implementation from HHS, OS, OASH, or OHQ.

DATES: Expressions of interest for FY 2011–12 must be received no later than close of business on November 30, 2011.

ADDRESSES: Expressions of interest, comments, and questions may be submitted by Email to *ohq@hhs.gov;* and by regular mail to Office of Healthcare Quality, Department of Health and Human Services, 200 Independence Avenue SW., Room 730E, Washington, DC 20201, or via fax to (202) 401–9547.

FOR FURTHER INFORMATION CONTACT: Daniel Gallardo via electronic mail to *ohq@hhs.gov*.

SUPPLEMENTARY INFORMATION:

Healthcare-associated infections exact a significant toll on human life. They are among the leading causes of preventable death in the United States. On average, 1 in 3 patients admitted to a hospital suffers a medical error or adverse event and at any given time about 1 in every 20 patients is affected by an infection related to hospital care. And, on average, 1 in 7 Medicare beneficiaries is harmed in the course of care, costing the government an estimated $4.4 billion every year. For these reasons, the prevention and reduction of healthcare-associated infections is a top priority for HHS.

The HHS Steering Committee for the Prevention of Healthcare-Associated Infections, led by Dr. Don Wright, Deputy Assistant Secretary for Healthcare Quality, was established in July 2008. The Steering Committee was charged with developing a comprehensive strategy to prevent and reduce healthcare-associated infections and issuing a plan which establishes national goals for healthcare-associated infection prevention and outlines key actions for achieving identified short- and long-term objectives. The plan, released in 2009 as the HHS Action Plan, is also intended to enhance collaboration with external stakeholders to strengthen coordination and impact of national efforts.

Therefore, OHQ is interested in establishing partnerships with private and public professional health organizations in order to further efforts in the prevention of healthcare-associated infections. As partners with OHQ, professional health related organizations can bring their ideas, expertise, administrative capabilities, and resources in the development of programs that promote the reduction and prevention of healthcare-associated infections.

Given OHQ's objective, entities that have similar goals and consistent interests, appropriate expertise and resources, and that would like to pursue a co-sponsorship opportunity with OHQ, are encouraged to reply to this notice with a conceptual proposal outlining the proposed program or event, including information regarding the program's or event's objective(s) and anticipated outcome(s). The proposal should not exceed more than two pages.

Working together, these partnerships will provide opportunities to promote the prevention and reduction of healthcare-associated infections.

Dated: November 9, 2011.

Don Wright,

Deputy Assistant Secretary for Healthcare Quality.

[FR Doc. 2011–29489 Filed 11–14–11; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Assessing the Feasibility of Disseminating Effective Health Center Products through Mobile Phone Applications.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 17, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Assessing the Feasibility of Disseminating Effective Health Center Products Through Mobile Phone Applications

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, this collection of information from users of work products and services initiated by the John M. Eisenberg Clinical Decisions and Communications Science Center (Eisenberg Center).

AHRQ is the lead agency charged with supporting research designed to improve the quality of healthcare, reduce its cost, improve patient safety, decrease medical errors, and broaden access to essential services. AHRQ's Eisenberg Center's mission is improving communication of findings to a variety of audiences (''customers''), including consumers, clinicians, and health care policy makers. The Eisenberg Center compiles research results into useful formats for customer stakeholders. The Eisenberg Center also conducts investigations into effective communication of research findings in order to improve the usability and rapid incorporation of findings into medical practice. The Eisenberg Center is one of three components of AHRQ's Effective Health Care (EHC) Program. The collections proposed under this clearance include activities to assess the

feasibility of using specific media and awareness-raising processes to encourage consumers who are at risk for selected health problems for which EHC Program materials are available to access information about such materials using mobile phone technologies. The project will specifically focus on promoting awareness of eight consumer guides developed through the EHC Program. The guides are all published in English and Spanish-language versions. All of the guides are designed to help decision makers, including clinicians and health care consumers, use research evidence to maximize the benefits of health care, minimize harm, and optimize the use of health care resources.

The project will test the feasibility of using mobile telephone technology for the dissemination of EHC Program materials to underserved health consumer populations using: (a) Short message services (SMS), usually referred to as texting, that can be provided to people with basic cell phone service and texting support; and (b) mobile Web access that provides access to the Internet via a mobile interface.

Different methods and/or vehicles will be used to promote awareness of opportunities to obtain cell phone- or smart phone-based information about the availability of EHC Program materials including: (1) Wall posters in patient service areas of the three (3) participating clinics; (2) flyers about the products distributed in magazine racks and through patient kiosks in some areas of the clinics; (3) flyers/announcements given to patients at checkout from the clinic; and (4) health fairs convened to address general health issues, where the information can be provided. Promotional materials will invite potential users to send a specific text message with the keyword associated with the relevant health condition to the advertised number. Subjects will receive a response text with a brief message about the condition and an invitation to either (a) request a printed consumer guide or (b) access the mobile Web site to view the guide.

This project has the following goals:

(1) Summarize marketing efforts in terms of total numbers of posters, flyers, and information sheets distributed through specific venues (*e.g.,* patient waiting areas, patient check-out processes) and numbers of individuals contacted through health fairs and related activities;

(2) Summarize the extent to which persons in targeted patient populations responded to marketing efforts;

(3) Assess patient satisfaction with: (a) The means by which patients were alerted as to the availability of EHC Program materials; (b) the methods patients used to request and access the EHC Program materials; and (c) the value and relevancy of the information that they obtained;

(4) Characterize perceptions of clinical care providers and clinical staff persons in terms of: (a) The value of efforts to promote patient awareness of EHC Program materials using marketing techniques described in this feasibility project; and (b) the effect of these efforts on workflow issues and related aspects of clinic operations.

This study is being conducted by AHRQ through its contractor, the Eisenberg Center—Baylor College of Medicine, pursuant to AHRQ's statutory authority to conduct and support research, and disseminate information, on healthcare and on systems for the delivery of such care, including activities with respect to both the quality, effectiveness, efficiency, appropriateness and value of healthcare services and clinical practice. 42 U.S.C. 299a(a)(1) and (4).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Focus Groups with Clinicians. A focus group will be conducted at each of the three participating clinics during regularly scheduled internal clinic meetings, to determine how the introduction of marketing materials and related resources influenced, if at all, delivery of care in the clinical settings. Special emphasis will be placed on determining if introduction of the project materials changed the ways in which patients interacted with clinicians. It is expected that each focus group will include no more than 10 clinical professionals (*e.g.,* physicians, physician assistants, nurses and nurse practitioners, pharmacists).

(2) Focus Groups with Support Staff. A focus group will be conducted with support staff working in each of the three participating clinics, during regularly scheduled meetings, to determine if the introduction of the project materials altered clinic workflows. It is expected that each focus group will include no more than 12 support staff (*e.g.,* receptionists, nursing assistants, other personnel who interact with patients).

(3) Patient Interviews. In-person interviews conducted immediately after the patient exits the clinic will be used to determine if patients: (a) Saw and understood the marketing materials (*e.g.,* posters and flyers) in clinic settings; (b) were encouraged by the marketing materials to text and request information about their health issue(s); (c) could identify specific reasons why they did or did not text; and (d) have suggestions about how marketing materials might be changed so that they would be more likely to encourage patients like themselves to text.

(4) Feedback Questionnaire for Patients Requesting Mailed Guides. All persons that respond to the marketing materials by requesting any of the eight guides to be mailed to them will be asked to complete a brief paper questionnaire included with the guides. The purpose of the questionnaire is to assess the extent to which the guides were easy to read and understand, whether the guides provided the information they sought, and any suggestions for improving and delivering the guides.

(5) Feedback Questionnaire for Patients Visiting the Mobile Web Site. All persons that access the guides via the mobile Web site will be asked to complete a brief online questionnaire. Only subjects exposed to the promotion materials will receive the address of the mobile Web site during the text message conversation, and therefore we expect no other individuals to visit this site. The purpose of the questionnaire is to determine if the guides were useful, the mobile Web site was easy to use, whether they found the information they needed and experienced any difficulty in accessing the guides through their cell phone.

(6) Usage Log Data. Data from automated electronic log systems will be collected from two sources: (1) Mobile Commons, the contractor that manages the cell phone-related message delivery and cell phone-based communication; and (2) the Eisenberg Center at Baylor College of Medicine that manages the EHC Web site visits. Usage log data gathered from the cell phone service contractor will include: (1) Counts of text messages received from persons requesting information about consumer guides; (2) the distribution of message counts across originating clinics tracked through the use of distinctive call-in or short code numbers assigned to each clinic; and (3) the numbers and originating clinic-specific distributions of follow-up texts. Because text communications will be date and time stamped, Eisenberg Center staff will be able to calculate mean durations in time from receipt of the initial messages and follow-ups, which may be useful in determining navigation patterns and suggesting connectivity barriers. Usage log data gathered from the mobile Web site will allow for identification of: (1) The number of visitors that originate

from a specific uniform record locator (URL) associated with each clinic; (2) the duration of visits to the EHC Web site to gather desired information and explore other resources available through the Web site; (3) the number of pages viewed by each visitor; and (4) the number of downloads of the full report associated with each guide, which will also be made available. These data will be obtained using automated systems already in place, and no special effort will be needed to generate these data; this task is not included in the burden estimates in Exhibit 1 below.

The Eisenberg Center will determine the feasibility of this approach to encouraging patients and anyone else viewing the marketing materials to access information that may be helpful to them in understanding health care choices and engaging more fully in their own health care, and whether this approach should be pursued further. This information will be used to determine the feasibility of: (a) Mounting broader efforts to distribute consumer guides, as well as other EHC Program products, using mobile technologies as tools to heighten awareness of these resources by potential users who rely on mobile communication devices for information access; and (b) initiating additional studies to identify factors that encourage or deter effective use of increasingly pervasive communication modalities (*e.g.,* cell phones, smart phones) in communicating with care providers and others and to access information from the Internet and health-related Web sites.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this research. Focus groups will be conducted with about 10 clinicians per each of the 3 participating clinics (30 total) and about 12 clinical support staff per clinic (36 total), and will last 45 minutes. Interviews will be conducted with about 100 patients per clinic (300 total) upon exit from the clinical visit, with each interview lasting about 15 minutes. The Feedback Questionnaire for the Mailed Guides will be completed by approximately 200 persons and will take 10 minutes to complete, and the Feedback Questionnaire for the Mobile site will be completed by about 200 persons and also requires 10 minutes to complete. The total annual burden is estimated to be 191 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this research. The total annual cost burden is estimated to be $5,320.

EXHIBIT 1—ESTIMATED ANNUALIZED TOTAL BURDEN HOURS

Type of data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Focus Groups with Clinicians	30	1	45/60	23
Focus Groups with Support Staff	36	1	45/60	27
Patient Interviews	300	1	15/60	75
Feedback Questionnaire for Patients Requesting Mailed Guides	200	1	10/60	33
Feedback Questionnaire for Patients Visiting Mobile Web site	200	1	10/60	33
Total	766	na	na	191

EXHIBIT 2—ESTIMATED ANNUALIZED TOTAL COST BURDEN

Type of data collection	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Focus Groups with Clinicians	30	23	$83.59	$1,923
Focus Groups with Support Staff	36	27	14.31	386
Patient Interviews	300	75	21.35	1,601
Feedback Questionnaire for Patients Requesting Mailed Guides	200	33	21.35	705
Feedback Questionnaire for Patients Visiting Mobile Web site	200	33	21.35	705
Total	766	191	na	5,320

*Based upon the mean wages for clinicians (29–1062 family and general practitioners), clinical team members (31–9092 medical assistants) and consumers (00–0000 all occupations), National Compensation Survey: Occupational wages in the United States May 2010, ''U.S. Department of Labor, Bureau of Labor Statistics.''

Estimated Annual Costs to the Federal Government

The maximum cost to the Federal Government is estimated to be $203,531 annually. Exhibit 3 shows the total and annualized cost by the major cost components.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$146,175	$73,088
Data Collection Activities	85,425	42,713
Data Processing and Analysis	65,375	32,688
Project Management	47,588	23,794

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Overhead	62,500	31,250
Total	407,063	203,531

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 3, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–29383 Filed 11–14–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Assessing the Feasibility of Disseminating Effective Health Care Products through a Shared Electronic Medical Record Serving Member Organization of a Health Information Exchange.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by January 17, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Assessing the Feasibility of Disseminating Effective Health Care Products through a Shared Electronic Medical Record Serving Member Organization of a Health Information Exchange.

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve under the Paperwork Reduction Act of 1995 this collection of information from users of work products and services initiated by the John M. Eisenberg Clinical Decisions and Communications Science Center (Eisenberg Center).

AHRQ is the lead agency charged with supporting research designed to improve the quality of healthcare, reduce its cost, improve patient safety, decrease medical errors, and broaden access to essential services. AHRQ's Eisenberg Center's mission is improving communication of findings to a variety of audiences (''customers''), including consumers, clinicians, and health care policy makers. The Eisenberg Center compiles research results into useful formats for customer stakeholders. The Eisenberg Center also conducts investigations into effective communication of research findings in order to improve the usability and rapid incorporation of findings into medical practice. The Eisenberg Center is one of three components of AHRQ's Effective Health Care (EHC) Program. The collections proposed under this clearance include activities to assess the feasibility of disseminating materials developed by the Eisenberg Center through the use of an electronic medical record (EMR) shared by a network of clinical care providers that are part of a Health Information Exchange (HIE) operating in multiple sites in several states. Our Community Health Information Network (OCHIN) members include 30 clinical care organizations operating more than 230 primary care clinics in six states. Data will be gathered from three different OCHIN-member organizations representing a total of 10 primary care clinics. The information generated will be provided to AHRQ to guide decision making and planning for additional efforts to foster EHC Program product distribution via EMR prompting and product linkages.

This research has the following goals:

(1) Identify facilitators and barriers to successful efforts to implement processes that: (a) Support use of EHC Program products by clinicians in practice, and (b) place relevant clinical information in the hands of patients and family members in languages and formats that are appropriate to patients' information needs;

(2) Examine ways in which EHC Program products can be used in concert with other support programs and products (*e.g.,* healthwise® resources available through the EMR; brief patient instructions and letters, including those designed for use with persons having very low literacy skills);

(3) Assess the extent to which EHC Program products are used (*e.g.,* accessed by clinicians, provided to patients in relevant formats) in settings where use is supported by automated EMR features, such as on-screen prompts and reminders; and

(4) Document the perceived value of integrating EHC Program products into systems of care supported by an EMR system as self-reported by clinicians involved in direct care of patients and clinic support personnel who interact with patients.

This study is being conducted by AHRQ through its contractor, the Eisenberg Center—Baylor College of Medicine, pursuant to AHRQ's statutory

authority to conduct and support research, and disseminate information, on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and clinical practice. 42 U.S.C. 299a(a)(1) and (4).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Automated Data Capture from EMR Usage Logs. Electronic usage data will be collected to determine the extent to which EHC Program guides for clinicians and patients were accessed to support shared decision making and patient education. The data will be retrieved from the existing EMR-linked database operated by the Kaiser Permanente staff in their coordination of activities related to the OCHIN HIE. Data will include: (a) Number and frequency of retrieval of EHC resource materials; (b) specific types of materials retrieved; and (c) health topic or condition targeted in the EHC materials. These data will inform the development of follow-up questions to be administered to clinicians and patients in the interviews and surveys described below. Because the data will be obtained using automated systems already in place, no special effort will be needed to generate these data, and thus this task is not included in the burden estimates in Exhibits 1 and 2.

(2) Interviews with Clinicians. Interviews will be held with clinical service providers for the following purposes: (a) Obtain perceptions of the overall value, relevancy, currency and appropriateness of EHC Program products in addressing the health service needs of patients treated in clinical settings; (b) assess ease of use of the materials in terms of access via the EMR; (c) determine perceived success of efforts to employ EHC Program products and related materials in addressing the needs of patients with limited language skills and/or low literacy levels; and (d) describe the relative success of efforts to use the EHC Program products in concert with other tools (*e.g.,* healthwise® resources) in promoting patient engagement in their own health care or in the care of family members.

(3) Interviews with Support Staff. Interviews will be held with non-clinical support staff to characterize perceptions of how the introduction of EHC Program products: (a) Affected clinic workflows and influenced the work that staff was required to do in supporting clinician-patient interactions; and (b) facilitated or impeded efforts to inform patients about actions they could take in being more fully involved in their own health care.

(4) Interviews with Patients. Interviews will be held with recruited patients to determine if they: (a) Viewed the EHC Program products that they were provided as useful to them in understanding their health issues; (b) were able to understand the EHC Program-related information that was provided to them sufficiently to take actions in their own health care; and (c) have suggestions about how the EHC Program materials could be changed or the delivery of them done in a different way to make the materials more useful and/or accessible to patients.

(5) Survey of Clinicians. A questionnaire will be administered to clinical care providers near the end of the study to gather quantitative data around their assessments of: (a) The relevancy of the EHC Program materials to the patients they serve; (b) the appropriateness of the products in addressing specific clinical issues; (c) the ease of use of the system created to provide access to EHC Program products through the EMR; and (d) overall ratings of the approach in addressing patient needs with regard to specific conditions addressed by the products available.

The interviews with clinicians, clinical staff, and patients will be conducted throughout the project period, approximately every three months with different sets of participants, to inform and refine delivery mechanisms and monitor progress.

This information will be used to determine the feasibility of: (a) Mounting broader efforts to distribute clinician and consumer guides, as well as other EHC products using EMRs as the primary vehicle for providing product access at the point of care; and (b) initiating additional studies to identify factors that encourage or deter effective integration of EHC products into care processes using electronic tools and care delivery support systems, like the EMR, that are increasingly common in clinical work settings.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this research. Three rounds of interviews will be conducted during the project period (each round of interviews to be held approximately every three months with separate sets of participants) to assess progress and adjust methods or refine materials as needed. Interviews will be conducted with 100 patients, 50 clinicians and 50 clinical support staff. Each interview is estimated to last no more than 30 minutes. All clinicians in each participating clinic will have access to the EMR and will be invited to participate in an online questionnaire. Approximately 200 clinicians will complete the 10-minute questionnaire.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annual cost burden is estimated to be $6,274.

EXHIBIT 1—ESTIMATED ANNUALIZED TOTAL BURDEN HOURS

Type of data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Interviews with Clinicians	50	1	30/60	25
Interviews with Support Staff	50	1	30/60	25
Interviews with Patients	100	1	30/60	50
Survey of Clinicians	200	1	30/60	33
Total	400	na	na	133

EXHIBIT 2—ESTIMATED ANNUALIZED TOTAL COST BURDEN

Type of Data Collection	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Interviews with Clinicians	50	25	$83.59	$2,090
Interviews with Support Staff	50	25	14.31	358
Interviews with Patients	100	50	21.35	1,068
Survey of Clinicians	200	−33	83.59	2,758
Total	400	133	na	6,274

Based upon the mean wages for clinicians (29–1062 family and general practitioners), clinical team members (31–9092 medical assistants) and patients/consumers (00–0000 all occupations), National Compensation Survey: Occupational wages in the United States May 2010, ''U.S. Department of Labor, Bureau of Labor Statistics.''

Estimated Annual Costs to the Federal Government

The maximum cost to the Federal Government is estimated to be $217,451 annually for two years. Exhibit 3 shows the total and annualized cost by the major cost components.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$153,750	$76,875
Data Collection Activities	162,465	81,233
Data Processing and Analysis	33,563	16,781
Project Management	22,625	11,313
Overhead	62,500	31,250
Total	434,903	217,451

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 3, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–29382 Filed 11–14–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–09BY]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Healthy Homes and Lead Poisoning Surveillance System (HHLPSS)—New—National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR)/Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The overarching goal of the Healthy Homes and Lead Poisoning Surveillance System (HHLPSS) is to establish Healthy Homes Surveillance Systems at the state and national levels. Currently, 40 state and local Childhood Lead Poisoning Prevention Programs (CLPPP) report information (e.g., presence of lead paint, age of housing, and type of housing) to CDC via the National Blood Lead Surveillance System (NBLSS) (OMB No. 0920–0337, exp. 1/31/2012). The addition of a new panel of housing questions would help to provide a more comprehensive picture of housing stock in the United States and potentially modifiable risk factors.

The objectives for developing this new surveillance system are two-fold. First, the HHLPSS will allow the CDC to systematically track how the state and local programs conduct case management and follow-up of residents with housing-related health outcomes.

The next objective for the development of this system is to examine potential housing-related risk factors. Childhood lead poisoning is just one of many adverse health conditions that are related to common housing deficiencies. Multiple hazards in housing, e.g., mold, vermin, radon and the lack of safety devices, continue to adversely affect the health of residents. It is in the interest of public health to

expand from a single focus on lead poisoning prevention to a coordinated, comprehensive, and systematic approach to eliminating multiple housing-related health hazards.

HHLPSS builds upon previous efforts by the NBLSS. While the earlier NBLSS was focused on homes of children less than six years old, the new HHLPSS, upon approval, will replace the NBLSS and will enable flexibility to evaluate all homes, regardless of the presence of children < age 6 years. In addition, replacement of NBLSS with HHLPSS instead of a modification is necessary because the scope and methods of data collection by the funded state and local programs can be much different (e.g., housing inspections vs. report of blood lead levels from a laboratory).

There is no cost to respondents other than their time. The total estimated annual burden hours equals 640.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State and Local Health Departments	Healthy Homes and Lead Poisoning Surveillance Variables (HHLPSS).	40	4	4

Dated: November 4, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–29443 Filed 11–14–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-12–11EX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 359–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Enhanced Implementation of the ''Learn the Signs. Act Early.'' Campaign in 4 Target Sites,—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's most recent data show that an average of one in 110 children has an autism spectrum disorder in 2006. Today, autism is recognized in many circles as an ''epidemic'' or ''crisis'' that is directly impacting the lives of many millions of Americans. All the communities participating in both the 2002 and 2006 studies observed an increase in identified ASD prevalence ranging from 27 percent to 95 percent, with an average increase of 57 percent. No single factor explains the changes in identified ASD prevalence over the time period studied. Although some of the increases are due to better detection, a true increase in risk cannot be ruled out.

Evidence has shown that early treatment can have a significant positive impact on the long-term outcome for children with an autism spectrum disorder. Early treatment, however, generally relies on the age at which a diagnosis can be made, thus pushing early identification research into a category of high public health priority (Pierce, *et al,* 2010).

To address this important health issue, the CDC has launched the ''Learn the Signs. Act Early.'' national campaign and developed partnerships with national autism and health care professional organizations to promote awareness of early childhood developmental milestones and increase early action on developmental concerns.

This request for data collection is for the evaluation of the ''Learn the Signs. Act Early.'' campaign implemented at a local level among four grantees. The proposed evaluation will assess the reach and awareness to determine if the proposed strategies and activities are effectively reaching the target populations. The evaluation will be accomplished by a pre-implementation survey and a post-implementation survey of parents of children ages 0–60 months in the target areas for each of the four grantees.

The surveys will capture information from the program's target audience to determine campaign reach and exposure among this group, as well as identify changes in knowledge, awareness, and behavior related to the campaign and monitoring early child development. The project aims to collect 250 completed parent surveys from each of the 4 sites prior to campaign implementation and after campaign implementation (for a total of 1,000 completed surveys). It is estimated that 1200 respondents will have to be screened in order to recruit 1000 total survey participants.

Participants will be recruited to participate in one of two surveys that will be conducted in the following four target areas:

- *Washington:* Yakima, Benton, Franklin, and Walla Walla counties
- *Missouri:* St. Louis City
- *Utah:* Salt Lake County
- *Alaska:* Anchorage, Palmer, Wasilla, Homer, Kenai

The information collected from the surveys is not intended to provide statistical data for publication. The purpose of this activity is solely to assess the impact of the ''Learn the Signs. Act Early.'' campaign in four target areas. The data collection will use a consistent format and comply with requirements under the Public Health Service Act, Executive Order 12862, and GPRA.

Without this information collection, CDC will be hampered in successfully carrying out its mission of providing high quality programs and services to populations served. Failure to collect this data would compromise efforts to reduce the impact of ASDs and other developmental disabilities on the U.S. population.

Data collection materials will be available in both English and Spanish. This request is being submitted to obtain OMB clearance for two years. There is no cost to the respondents other than their time to participate. The total annualized burden for this project is 454 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Screener	1200	1	3/60	60
Pre-Implementation Survey	1000	1	10/60	167
Screener	1200	1	3/60	60
Post-Implementation Survey	1000	1	10/60	167
Total				454

Dated: November 8, 2011.

Daniel L. Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–29417 Filed 11–14–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0112]

The Critical Infrastructure Partnership Advisory Council (CIPAC)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Quarterly CIPAC membership update.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the Critical Infrastructure Partnership Advisory Council (CIPAC) by notice published in the **Federal Register** Notice (71 FR 14930–14933) dated March 24, 2006. That notice identified the purpose of CIPAC as well as its membership. This notice provides: (i) The quarterly CIPAC membership update; (ii) instructions on how the public can obtain the CIPAC membership roster and other information on the Council; and, (iii) information on recently completed CIPAC meetings.

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, Director, Partnership Programs and Information Sharing Office, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0607, Arlington, VA 20598–0607, by telephone (703) 235–3999 or via email at *CIPAC@dhs.gov.*

Responsible DHS Official: Nancy J. Wong, Director Partnership Programs and Information Sharing Office, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0607, Arlington, VA 20598–0607, by telephone (703) 235–3999 or via email at *CIPAC@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Activity: The CIPAC facilitates interaction between government officials and representatives of the community of owners and/or operators for each of the critical infrastructure sectors defined by Homeland Security Presidential Directive 7 (HSPD–7) and identified in the National Infrastructure Protection Plan (NIPP). The scope of activities covered by the CIPAC includes planning; coordinating among government and critical infrastructure owner/operator security partners; implementing security program initiatives; conducting operational activities related to critical infrastructure protection security measures, incident response, recovery, infrastructure resilience, reconstituting critical infrastructure assets and systems for both man-made as well as naturally occurring events; and sharing threat, vulnerability, risk mitigation, and infrastructure continuity information.

Organizational Structure: CIPAC members are organized into eighteen (18) critical infrastructure sectors. Within all of the sectors containing critical infrastructure owners/operators, there generally exists a Sector Coordinating Council (SCC) that includes critical infrastructure owners and/or operators or their representative trade associations. Each of the sectors also has a Government Coordinating Council (GCC) whose membership includes a lead Federal agency that is defined as the Sector Specific Agency (SSA), and all relevant Federal, state, local, Tribal, and/or territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activities for that particular sector.

CIPAC Membership: CIPAC Membership may include:

(i) Critical infrastructure owner and/or operator members of an SCC;

(ii) Trade association members who are members of an SCC representing the interests of critical infrastructure owners and/or operators;

(iii) Each sector's Government Coordinating Council (GCC) members; and,

(iv) State, local, Tribal, and territorial governmental officials comprising the DHS State, Local, Tribal, and Territorial GCC.

CIPAC Membership Roster and Council Information: The current roster of CIPAC membership is published on the CIPAC Web site (*http://www.dhs.gov/cipac*) and is updated as the CIPAC membership changes. Members of the public may visit the CIPAC Web site at any time to obtain current CIPAC membership as well as the current and historic list of CIPAC meetings and agendas.

Dated: November 4, 2011.

Nancy Wong,

Designated Federal Officer for the CIPAC.

[FR Doc. 2011–29347 Filed 11–14–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0084]

Privacy Act of 1974; Department of Homeland Security/U.S. Citizenship and Immigration Services—014 Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services—014 Electronic Immigration System-1 Temporary Accounts and Draft Benefit

Requests System of Records.'' This system of records allows the Department of Homeland Security/U.S. Citizenship and Immigration Services to collect and maintain records on an individual as he or she creates a temporary electronic account and/or drafts a benefit request for submission through the U.S. Citizenship and Immigration Services Electronic Immigration System. This system of records notice is being updated to reflect the incorporation of new forms, new categories of records, and clarified data retention to better inform the public. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 15, 2011. This system will be effective December 15, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0084 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins (202) 272–8000, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703) 235–0780, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) proposes to update and reissue the DHS system of records titled, ''DHS/USCIS–014 Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests System of Records.'' This system of records notice is being updated to reflect the incorporation of new forms, new categories of records, and clarified data retention to better inform the public. DHS received one public comment which did not address this system of records notice. DHS will not make any changes in response to the public comment.

DHS/USCIS is creating a new electronic environment known as the Electronic Immigration System (USCIS ELIS). USCIS ELIS allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities.

DHS and USCIS promulgated the regulation ''Immigration Benefits Business Transformation, Increment I'' (August 29, 2011, 76 FR 53764) to allow USCIS to transition to an electronic environment. This regulation assists USCIS in the transformation of its operations by removing references and processes that inhibit the use of electronic systems or constrain USCIS's ability to respond to new requirements.

Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to an Applicant (Co-Applicants); and their attorneys and representatives accredited by the Board of Immigration Appeals (Representatives) may create individualized online accounts. These online accounts help Applicants and their Representatives file for benefits, track the status of open benefit requests, schedule appointments, change their addresses and contact information, and receive notices and notifications regarding their cases. Through USCIS ELIS, individuals may submit evidence electronically. Once an individual provides biographic information in one benefit request, USCIS ELIS uses that information to pre-populate any future benefit requests. This eases the burden on an individual so he or she does not have to repeatedly type in the same information.

USCIS is publishing three System of Records Notices (SORNs) to cover the following three distinct processes of this new electronic environment and the privacy and security protections incorporated into USCIS ELIS:

1. *Temporary Accounts and Draft Benefit Requests:* The Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests SORN (DHS/USCIS–014) addresses temporary data provided by Applicants or Representatives. This temporary data includes temporary accounts for first-time Applicants and draft benefit request data from first-time Applicants, Applicants with permanent accounts, and Representatives. Applicants first interact with USCIS ELIS by creating a temporary account, setting notification preferences, and drafting the first benefit request. If a first-time Applicant does not begin drafting a benefit request within 30 days of opening the temporary account, USCIS ELIS deletes the temporary account. If he or she does not submit the benefit request within 30 days of starting a draft benefit request, USCIS ELIS deletes the temporary account and all draft benefit request data. If a first-time Applicant submits the benefit request within 30 days, USCIS ELIS changes the status of the account from temporary to permanent. Applicants with permanent USCIS ELIS accounts or Representatives may also draft benefit requests. USCIS ELIS deletes all draft benefit requests if they are not submitted within 30 days of initiation.

2. *Account and Case Management:* The Electronic Immigration System-2 Account and Case Management SORN (DHS/USCIS–015) addresses the activities undertaken by USCIS after Applicants or Representatives submit a benefit request. USCIS ELIS uses information provided on initial and subsequent benefit requests and subsequent collections through the Account and Case Management process to create or update USCIS ELIS accounts; collect any missing information; manage workflow; assist USCIS adjudicators as they make a benefit determination; and provide a repository of data to assist with future benefit requests. In addition, USCIS ELIS processes and tracks all actions related to the case, including scheduling appointments and issuing decision notices and/or proofs of benefit.

3. *Automated Background Functions:* The Electronic Immigration System-3 Automated Background Functions SORN (DHS/USCIS–016) addresses the actions USCIS ELIS takes to detect duplicate and related accounts and identify potential national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny.

This SORN addresses the USCIS ELIS temporary account process for first-time Applicants in USCIS ELIS and the draft benefit request process for all Applicants and Representatives.

Because USCIS ELIS collects this information before a benefit request is submitted, USCIS does not have an official need-to-know the information in the drafted benefit request. USCIS is segregating temporary account and draft benefit request information from permanent information in USCIS ELIS and preventing USCIS personnel (aside from USCIS ELIS System Administrators as part of their system maintenance duties) from viewing this temporary data until the Applicant or Representative submits the benefit request. USCIS will purge this information from USCIS ELIS if the Applicant or Representative does not submit the benefit request within 30 days of initiation. If the Applicant submits the benefit request, USCIS converts the temporary account to a permanent account and processes the benefit request information according to the guidelines set forth in the Electronic Immigration System-2 Account and Case Management SORN and Electronic Immigration System-3 Automated Background Functions SORN.

Temporary Accounts

DHS is clarifying the process used to establish and retain temporary accounts and draft benefit requests. USCIS ELIS creates temporary accounts for Applicants that have not previously submitted a benefit request through USCIS ELIS. These temporary accounts permit the first-time Applicant to log in to USCIS ELIS, set notification preferences, and draft a benefit request. If a first-time Applicant does not begin drafting a benefit request within 30 days of opening the temporary account, USCIS ELIS deletes the temporary account. If a first-time Applicant begins drafting a benefit request within 30 days of creating the temporary account, he or she will have 30 days to submit the benefit request. If he or she does not submit the benefit request within 30 days of starting a draft benefit request, USCIS ELIS deletes the temporary account and all draft benefit request data. If a first-time Applicant submits the benefit request within 30 days, USCIS ELIS changes the status of the account from temporary to permanent. This minimizes the time USCIS ELIS retains personally identifiable information (PII) about individuals that have no pending benefit requests with USCIS, while still giving Applicants time to draft and submit a benefit request. If the Applicant submits a benefit request within the time allotted, USCIS ELIS converts the temporary account to a permanent account and treats it according to the Electronic Immigration System-2 Account and Case Management SORN and Electronic Immigration System-3 Automated Background Functions SORN.

Draft Benefit Requests

USCIS ELIS retains benefit requests drafted by Applicants or Representatives for 30 days from initiation to further minimize the PII retained by USCIS ELIS. This information is not accessible by USCIS personnel (aside from system administrators for system maintenance) and will only be shared internally for system maintenance purposes and externally to reduce the harm to individuals in the event the system is compromised. However, once a benefit request has been formally submitted to USCIS, the information will be retained and used according to the Electronic Immigration System-2 Account and Case Management SORN and Electronic Immigration System-3 Automated Background Functions SORN in order to maintain USCIS ELIS accounts and determine eligibility for requested benefits.

DHS is revising the list of legacy forms that will be incorporated into USCIS ELIS. Additional forms from which information will be collected will be posted to the USCIS ELIS Web site as the system develops. New categories of records collected on this revised list of forms include immigration history (citizenship/naturalization certificate number, removals, statuses, explanations, etc.), appeals or motions to reopen or reconsider decisions, U.S. State Department-Issued Personal Identification Number (PID), vaccinations, and medical referrals. In the first release of USCIS ELIS, USCIS collects information from the following updated list of forms:

- I–90—Application to Replace Permanent Residence Card (1615–0082), 08/31/12;
- I–102—Application for Replacement/Initial Nonimmigrant Departure Document (1615–0079), 08/31/12;
- I–130—Petition for Alien Relative (1615–0012), 01/31/12 (as evidence);
- I–131—Application for Travel Document (1615–0013), 03/31/12;
- I–134—Affidavit of Support (1615–0014), 05/31/12 (as evidence);
- I–290B—Notice of Appeal or Motion (91615–0095), 05/31/12;
- I–508/I–508F—Waiver of Rights, Privileges, Exemptions, and Immunities (1615–0025), 11/30/11;
- I–539—Application to Extend/Change Nonimmigrant Status (1615–0003), 02/29/12;
- I–539—Application to Extend/Change Nonimmigrant Status (On-Line Application) (Pending);
- I–566—Interagency Record of Request—A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status (1615–0027), 01/31/11 (as evidence);
- I–601—Application for Waiver of Grounds of Inadmissibility (1615–0029), 06/30/12;
- I–693—Report of Medical Examination and Vaccination Record (1615–0033), 10/31/11;
- I–765—Application for Employment Authorization (1615–0040), 09/30/11;
- I–821—Application for Temporary Protected Status (1615–0043), 10/31/13;
- I–912—Request for Fee Waiver (1615–0116), 10/31/12;
- AR–11—Alien Change of Address Card System (1615–0007), 09/30/11; and
- G–28 Notice of Entry of Appearance as Attorney or Accredited Representative (1615–0105), 04/30/12.

USCIS collects, uses, and maintains temporary account and draft benefit request information pursuant to the Immigration and Nationality Act of 1952, Public Law No. 82–414, sections 101 and 103, as amended.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCIS—014 Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of

Management and Budget and to Congress.

System of Records

DHS/USCIS–014

SYSTEM NAME:

DHS/USCIS–014 Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests System of Records

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the USCIS Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests (USCIS ELIS Temporary Accounts and Draft Benefit Requests) stores and/or uses information about individuals who receive or petition for benefits under the Immigration and Nationality Act, as amended. These individuals include: Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to an Applicant (Co-Applicants); attorneys and Board of Immigration Appeals accredited representatives (Representatives); and individuals that assist in the preparation of the benefit request.

CATEGORIES OF RECORDS IN THE SYSTEM:

Temporary USCIS ELIS account information includes the following from all of the categories of individuals above. If an Applicant or Representative formally submits a benefit request within the 30-day window, USCIS converts the temporary account to a permanent USCIS ELIS account and retains the information according to the Electronic Immigration System-2 Account and Case Management SORN and Electronic Immigration System-3 Automated Background Functions SORN.

An Applicant's temporary USCIS ELIS account registration information includes the following:

- Valid email address
- Password
- Challenge questions and answers
- Telephone Number (optional)

All benefit requests about the Applicant or Co-Applicant includes the following information:

- Alien Registration Number(s)
- Full name and any alias(es) used
- Physical and mailing address(es)
- Immigration status
- Date of birth
- Place of birth (city, state, and country)
- Country of citizenship
- Gender
- Contact information (Phone number(s), Email address)
- Military status
- Government-issued identification (e.g. passport, driver's license):
  - Document type
  - Issuing organization
  - Document number
  - Expiration date
- Benefit requested
- IP Address
- Browser information
- USCIS ELIS account number (for returning Applicants)

The following information may be requested for benefit-specific eligibility:

- U.S. State Department-Issued Personal Identification Number (PID)
- Arrival/Departure Information
- Immigration history (citizenship/naturalization certificate number, removals, explanations, etc.)
- Family Relationships (e.g., Parent, Spouse, Sibling, Child, Other Dependents, etc., as well as polygamy, custody, guardianship, and other relationship issues)
- USCIS Receipt/Case Number
- Personal Background Information (e.g., involvement with national security threats, Communist party, torture, genocide, killing, injuring, forced sexual contact, limiting or denying others religious beliefs; service in military or other armed groups; work in penal or detention systems, weapons distribution, combat training, etc.)
- Health Information (e.g., vaccinations, referrals, communicable disease, physical or mental disorder, prostitution, drug abuse, etc.)
- Education History
- Work History
- Financial Information (income, expenses, scholarships, savings, assets, property, financial support, supporter information, life insurance, debts, encumbrances, etc.)
- Social Security Number, if applicable
- Supporting documentation as necessary (i.e. birth certificate, appeals or motions to reopen or reconsider decisions, etc.)
- Criminal Records

Preparer information includes:

- Name
- Organization
- Physical and Mailing Addresses
- Phone and Fax Numbers
- Paid/Not Paid
- Relationship to Applicant

Representative information includes:

- Name
- Law Firm/Recognized Organization
- Physical and Mailing Addresses
- Phone and Fax Numbers
- Email Address
- Attorney Bar Card Number or Equivalent
- BAR Membership
- Accreditation Date
- BIA Representative Accreditation Expiration Date
- Law Practice Restriction Explanation

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Immigration and Nationality Act of 1952, Public Law 82–414, sections 101 and 103, as amended.

PURPOSE(S):

The purpose of the system collecting this information is to provide an Applicant with a temporary account so that he or she may submit a benefit request through USCIS ELIS for the first time. All draft benefit request information is collected to assist the Applicant or Representative in providing all of the information necessary to request a benefit. If a first-time Applicant does not formally submit a benefit request within 30 days of opening the temporary account or initiating the draft benefit request, the information will be deleted. If an Applicant or Representative formally submits a benefit request within the 30-day window, USCIS converts the temporary account to a permanent USCIS ELIS account and retains the information according to the USCIS ELIS Account and Case Management SORN and USCIS ELIS Automated Background Functions SORN.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity

theft or fraud, harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity), or harm to the individual that relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and/or persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

B. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

If a benefit request has been submitted to USCIS within 30 days of initiation, the information will become permanent and shared according to the routine uses listed in the Electronic Immigration System-2 Account and Case Management SORN and Electronic Immigration System-3 Automated Background Functions SORN in order to maintain USCIS ELIS accounts and determine eligibility for requested benefits.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically in secure facilities. The records are stored on magnetic disc and/or tape to maintain a real-time copy of the data for disaster recovery purposes. Real-time copies of data are deleted at the same time as the original data.

RETRIEVABILITY:

Records may be retrieved by any of the data elements listed above or combination thereof.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need-to-know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCIS has submitted to the National Archives and Records Administration (NARA) a retention schedule for these records. USCIS proposes that if a first-time Applicant does not begin drafting a benefit request within 30 days of opening the temporary account, USCIS ELIS deletes the temporary account. If a first-time Applicant begins drafting a benefit request within 30 days of creating the temporary account, he or she will have 30 days to submit the benefit request. If he or she does not submit the benefit request within 30 days of starting a draft benefit request, USCIS ELIS deletes the temporary account and all draft benefit request data. If an Applicant or Representative formally submits a benefit request within the 30-day window, USCIS converts the temporary account to a permanent USCIS ELIS account and retains the information according to the Electronic Immigration System-2 Account and Case Management SORN and Electronic Immigration System-3 Automated Background Functions SORN.

SYSTEM MANAGER AND ADDRESS:

The DHS system manager is the Chief, Records Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may log in to USCIS ELIS to amend their information within the 30-day window. If they submit a benefit request, the information will still be available by logging in to their USCIS ELIS account and may be amended through the processes described in the USCIS ELIS Account and Case Management SORN and USCIS ELIS Automated Background Functions SORN.

Because of the temporary nature of this data, records will not likely be available for FOIA requests. However, individuals are free to request records pertaining to them by submitting a request in writing to the National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010. Specific FOIA contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from the Applicant or his or her Representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 2, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–29449 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0087]

Privacy Act of 1974; Department of Homeland Security/U.S. Citizenship and Immigration Services—016 Electronic Immigration System-3 Automated Background Functions System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue the Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services—016 Electronic Immigration System-3 Automated Background Functions System of Records.'' This system of records will allow the Department of Homeland Security/U.S. Citizenship and Immigration Services to collect and maintain certain biographic information about individuals in the U.S. Citizenship and Immigration -Services Electronic Immigration System and its legacy systems in order to detect duplicate and related accounts and identify potential national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny. This system of records notice is being updated to clarify the data retention policy. Additionally, the Department of Homeland Security is issuing a Final Rule elsewhere in the **Federal Register**, to exempt this system of records from certain provisions of the Privacy Act. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 15, 2011. This system will be effective December 15, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0087 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (703) 483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins ((202) 272–8030), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan ((703) 235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS) proposes to update and reissue the DHS system of records titled, ''DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records.'' This system of records notice is being updated to clarify the data retention policy and to recognize the issuance of a Final Rule exempting the system from portions of the Privacy Act. DHS received no public comments for this system of records notice. Consequently, DHS is not making any changes in response to public comments.

DHS/USCIS is creating a new electronic environment known as the Electronic Immigration System (USCIS ELIS). USCIS ELIS allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities.

DHS and USCIS are promulgating the regulation ''Immigration Benefits Business Transformation, Increment I'' (August 29, 2011, 76 FR 53764) to allow for USCIS to transition to an electronic environment. This regulation will assist USCIS in the transformation of its operations by removing references and processes that inhibit the use of electronic systems or constrain USCIS's ability to respond to changing workloads, priorities, and statutory requirements.

Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to the Applicant (Co-Applicants); and their attorneys and representatives accredited by the Board of Immigration Appeals (Representatives) may create individualized online accounts. These online accounts help Applicants and their Representatives file for benefits, track the status of open benefit requests, schedule appointments, change their addresses and contact information, and receive notices and notifications regarding their particular cases. Through USCIS ELIS, individuals may submit evidence electronically. Once an individual provides biographic information for one benefit request, USCIS ELIS uses that information to pre-populate any future benefit requests by the same individual. This eases the burden on an individual so he or she does not have to repeatedly type in the same information and also reduces the number of possible errors.

USCIS is publishing three System of Records Notices (SORNs) to cover the following three distinct processes of this new electronic environment and the privacy and security protections incorporated into USCIS ELIS:

1. *Temporary Accounts and Draft Benefit Requests:* The Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests SORN (DHS/USCIS–014) addresses temporary data provided by Applicants or Representatives. This temporary data includes temporary accounts for first-time Applicants and draft benefit request data from first-time Applicants, Applicants with permanent accounts, and Representatives. Applicants first interact with USCIS ELIS by creating a temporary account, setting notification preferences, and drafting the first benefit request. If a first-time Applicant does not begin drafting a benefit request within 30 days of opening the temporary account, USCIS ELIS deletes the temporary account. If he or she does not submit the benefit request within 30 days of starting a draft benefit request, USCIS ELIS deletes the temporary account and all draft benefit request data. If a first-time Applicant submits the benefit request within 30 days, USCIS ELIS automatically changes the

status of the account from temporary to permanent. Applicants with permanent USCIS ELIS accounts or Representatives may also draft benefit requests. USCIS ELIS deletes all draft benefit requests if they are not submitted within 30 days of initiation.

2. *Account and Case Management:* The Electronic Immigration System-2 Account and Case Management SORN (DHS/USCIS–015) addresses the activities undertaken by USCIS after Applicants or Representatives submit a benefit request. USCIS ELIS uses information provided on initial and subsequent benefit requests and subsequent collections through the Account and Case Management process to create or update USCIS ELIS accounts; collect any missing information; manage workflow; assist USCIS adjudicators as they make a benefit determination; and provide a repository of data to assist with future benefit requests. In addition, USCIS ELIS processes and tracks all actions related to the case, including scheduling appointments and issuing decision notices and/or proofs of benefit.

3. *Automated Background Functions:* The Electronic Immigration System-3 Automated Background Functions SORN (DHS/USCIS–016) addresses the actions USCIS ELIS takes to detect duplicate and related accounts and identify potential national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny.

Electronic Immigration System-3 Automated Background Functions (USCIS ELIS Automated Background Functions) uses biographic information stored in Electronic Immigration System-2 Account and Case Management (USCIS ELIS Account and Case Management) to run a series of automated rules on that information, generating results, and assigning confidence and severity levels to the results to assist USCIS personnel reviewing the results. The results of all USCIS ELIS Automated Background Functions are returned to the account or case and are used and shared according to the Electronic Immigration System-2 Account and Case Management SORN. USCIS ELIS Automated Background Functions use this information to detect duplicates and related records, and to identify national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny.

Detect Duplicates and Related Records

In order to identify duplicate USCIS ELIS accounts, other USCIS records pertaining to the individual, and relationships among individuals with USCIS records, USCIS ELIS Automated Background Functions maintain a copy of biographical information from USCIS ELIS accounts and cases (described in the Electronic Immigration System-2 Account and Case Management SORN), as well as the following legacy USCIS systems: Alien File/Central Index System; Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3); Computer Linked Application Information Management System (CLAIMS 4); Refugees, Asylum, and Parole System (RAPS); and Fraud Detection and National Security Data System (FDNS–DS).

Background, National Security, and Criminality Checks

USCIS ELIS Automated Background Functions automatically perform background checks when new information is received by querying several DHS, Federal Bureau of Investigation (FBI), and other agencies' law enforcement and/or immigration systems, as appropriate, to identify national security and/or law enforcement concerns.

Identification of Possible Fraud

Results from the de-duplication and relationship analysis and background checks are run against a set of USCIS analyst-derived rules to assign confidence levels indicating how strongly the information in one record matches another record, as well as a severity level indicating possible criminal, national security, or fraudulent activity. Each result will have a summary which will include the rule used to produce the result and any alerts or flags to control subsequent processing. Once the rules have returned results and confidence and severity levels are assigned, USCIS ELIS Automated Background Functions will route the case to the appropriate USCIS personnel based on the nature of the results.

Information is shared outside of DHS to perform system queries as part of USCIS ELIS Automated Background Functions. USCIS shares biographic information with the Department of State (DOS) and receives visa information in return. USCIS provides biometric and biographic information to, and receives criminal history information from, the FBI. USCIS provides biographic information to, and receives biographic and immigration court data from, the Department of Justice (DOJ) Executive Office of Immigration Review (EOIR).

The proposed routine uses are compatible with the purpose of the original collection. The routine uses have been tailored to ensure that the information within the system is shared through USCIS Automated Background Functions when an individual requests a benefit. Generally, all other sharing will occur out of the Electronic Immigration System-2 Account and Case Management SORN. However, pursuant to (b)(1) of the Privacy Act, this information may be shared with other DHS components pursuant to its mission within the Department.

USCIS collects, uses, and maintains benefit request eligibility results pursuant to 8 U.S.C. 1103 and 8 U.S.C. 1225.

Consistent with DHS's information sharing mission, information stored in USCIS ELIS Automated Background Functions may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need-to-know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

DHS is issuing a Final Rule to exempt this system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), elsewhere in the **Federal Register**. Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from a law enforcement system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other

identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/USCIS–016.

SYSTEM NAME:

DHS/USCIS–016 Electronic Immigration System-3 Automated Background Functions.

SECURITY CLASSIFICATION:

Unclassified, sensitive, for official use only, law enforcement sensitive.

SYSTEM LOCATION:

Records are maintained at the United States Citizenship and Immigration Services Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USCIS ELIS Automated Background Functions stores and/or uses information about individuals who previously received or petitioned for benefits in USCIS ELIS, or have information in USCIS legacy systems described under ''records source,'' under the Immigration and Nationality Act (INA), as amended. These individuals include: Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependants or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to the Applicant (Co-Applicants); attorneys and representatives accredited by the Board of Immigration Appeals (Representatives); and individuals that assist in the preparation of the benefit request.

CATEGORIES OF RECORDS IN THE SYSTEM:

- ELIS Account Number
- Name
- Date of Birth
- Place of Birth
- Country of Citizenship
- Gender
- Social Security Number, if applicable
- Alien Number
- Marital Status
- Family Relationships
- Current and Past Address Information
- Current and Past Telephone Information
- Case ID Number (specific to the benefit application)
- Application Type
- Passport Information
- Drivers License Number
- Email Address
- Eye Color
- Hair Color
- Height
- Attorney or Accredited Representative Information
- Employment Information
- FBI Number, if available
- Entry/Exit Data
- Rules used to generate results, assign confidence and severity levels, assign system flags, and route cases

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103 and 8 U.S.C. 1225.

PURPOSE(S):

The purpose of USCIS ELIS Automated Background Functions is to assist USCIS personnel in detecting duplicate and related accounts; identifying potential national security concerns, criminality, and fraud; as well as ensuring that serious or complex cases receive additional scrutiny.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To DOJ, including U.S. Attorney Offices, or other federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To the Department of Justice (DOJ) Executive Office of Immigration Review (EOIR) in the processing of petitions or applications for benefits under INA, and all other immigration and nationality laws including treaties and reciprocal agreements.

H. To DOS in the processing of petitions or applications for benefits under INA, and all other immigration and nationality laws including treaties and reciprocal agreements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by any of the data elements listed above or combination thereof.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCIS is currently in negotiations with NARA for approval of the USCIS ELIS data retention and archiving plan. USCIS proposes retaining the copy of biographic data stored in USCIS ELIS Automated Background Functions as long as the records exist in the source system. However, USCIS is reviewing its needs for the information as it transitions to a fully electronic environment and may amend its retention, as needed.

USCIS proposes that, in compliance with NARA General Records Schedule 24, section 6, ''User Identification, Profiles, Authorizations, and Password Files,'' internal user accounts will be destroyed or deleted six years after the user account is terminated, or when no longer needed for investigative or security purposes, whichever is later.

SYSTEM MANAGER AND ADDRESS:

The DHS system manager is the Chief, Records Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it may maintain law enforcement information. However, DHS/USCIS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010. Specific FOIA contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–(866) 431–0486. In addition you should:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are retrieved through, but not stored in, the USCIS ELIS Automated Background Functions from the following USCIS, DHS, and other federal agency systems of records:

- DHS/USCIS–015—Electronic Immigration System-2—Account and Case Management System of Records;
- DHS/USCIS–001—Alien File, Index, and National File Tracking System of Records;
- DHS/USCIS–007—Benefits Information System (BIS);
- DHS/USCIS–010—Asylum Information and Pre-Screening;
- DHS/USCIS–006—Fraud Detection and National Security Data System (FDNS–DS);
- DHS/CBP–011—U.S. Customs and Border Protection TECS;
- DHS/ICE–001—Student and Exchange Visitor Information System (SEVIS);
- DHS/ICE–011—Immigration Enforcement Operational Records System (ENFORCE);
- DHS/USVISIT–001—Arrival and Departure Information System (ADIS);
- DHS/USVISIT–0012—DHS Automated Biometric Identification System (IDENT);
- Department of State Consular Consolidated Database (CCD);
- JUSTICE/EOIR–001—Records and Management Information System;
- JUSTICE/FBI–002—FBI Central Records System; and
- JUSTICE/FBI–009—Fingerprint Identification Records System (FIRS).

In order to resolve identity and relationships, records stored in USCIS ELIS Automated Background Functions are obtained from the following USCIS systems of records: Electronic Immigration System-2 Account and Case Management; Alien File, Index, and National File Tracking; Fraud Detection and National Security Data System; Benefits Information System; and Asylum Information and Pre-Screening.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from

another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

Dated: November 2, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–29450 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0085]

Privacy Act of 1974; Department of Homeland Security/U.S. Citizenship and Immigration Services–015 Electronic Immigration System-2 Account and Case Management System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services–015 Electronic Immigration System-2 Account and Case Management System of Records.'' This system of records will allow the Department of Homeland Security/U.S. Citizenship and Immigration Services to collect and maintain records on an individual after he or she submits a benefit request and/or updates account information to create or update U.S. Citizenship and Immigration Services Electronic Immigration System accounts; gather any missing information; manage workflow; assist U.S. Citizenship and Immigration Services in making a benefit determination; and provide a repository of data to assist with the efficient processing of future benefit requests. U.S. Citizenship and Immigration Services Electronic Immigration System-2 Account and Case Management will also be used to process and track all actions related to a particular case, including scheduling appointments and issuing decision notices and/or proofs of benefit. This system of records notice is being updated to reflect the incorporation of new forms, new categories of records, and clarified data retention to better inform the public. Additionally, the Department of Homeland Security is issuing a Final Rule elsewhere in the **Federal Register**, to exempt this system of records from certain provisions of the Privacy Act. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 15, 2011. This system will be effective December 15, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011-0085 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Donald K. Hawkins ((202) 272–8000), Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan ((703) 235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) proposes to update and reissue the DHS system of records titled, ''DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management System of Records.'' This system of records notice is being updated to reflect the incorporation of new forms and new categories of records, to clarify the data retention policy, and to recognize the issuance of a Final Rule exempting the system from portions of the Privacy Act. DHS received two public comments which did not address this system of records notice. DHS will not make any changes in response to the public comments.

DHS and USCIS are promulgating the regulation ''Immigration Benefits Business Transformation, Increment I'' (August 29, 2011, 76 FR 53764) to allow for USCIS to transition to an electronic environment. This regulation will assist USCIS in the transformation of its operations by removing references and processes that inhibit the use of electronic systems or constrain USCIS's ability to respond to changing workloads, priorities, or statutory requirements.

DHS/USCIS is creating a new electronic environment known as the Electronic Immigration System (USCIS ELIS). USCIS ELIS allows individuals requesting a USCIS benefit to register online and submit certain benefit requests through the online system. This system will improve customer service; increase efficiency for processing benefits; better identify potential national security concerns, criminality, and fraud; and create improved access controls and better auditing capabilities.

Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to an Applicant (Co-Applicants); and their attorneys and representatives accredited by the Board of Immigration Appeals (Representatives) may create individualized online accounts. These online accounts help Applicants and their Representatives file for benefits, track the status of open benefit requests, schedule appointments, change their addresses and contact information, and receive notices and notifications regarding their particular cases. Through USCIS ELIS, individuals may submit evidence electronically. Once an individual provides biographic information for one benefit request, USCIS ELIS uses that information to pre-populate any future benefit requests by the same individual. This eases the burden on an individual so he or she does not have to repeatedly type in the same information and also reduces the number of possible errors.

USCIS is publishing three System of Records Notices (SORNs) to cover the following three distinct processes of this new electronic environment and the privacy and security protections incorporated into USCIS ELIS:

1. *Temporary Accounts and Draft Benefit Requests:* The Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests SORN (DHS/USCIS–014) addresses

temporary data provided by Applicants or Representatives. This temporary data includes temporary accounts for first-time Applicants and draft benefit request data from first-time Applicants, Applicants with permanent accounts, and Representatives. Applicants first interact with USCIS ELIS by creating a temporary account, setting notification preferences, and drafting the first benefit request. If a first-time Applicant does not begin drafting a benefit request within 30 days of opening the temporary account, USCIS ELIS deletes the temporary account. If he or she does not submit the benefit request within 30 days of starting a draft benefit request, USCIS ELIS deletes the temporary account and all draft benefit request data. If a first-time Applicant submits the benefit request within 30 days, USCIS ELIS automatically changes the status of the account from temporary to permanent. Applicants with permanent USCIS ELIS accounts or Representatives may also draft benefit requests. USCIS ELIS deletes all draft benefit requests if they are not submitted within 30 days of initiation.

2. *Account and Case Management:* The Electronic Immigration System-2 Account and Case Management SORN (DHS/USCIS–015) addresses the activities undertaken by USCIS after Applicants or Representatives submit a benefit request. USCIS ELIS uses information provided on initial and subsequent benefit requests and subsequent collections through the Account and Case Management process to create or update USCIS ELIS accounts; collect any missing information; manage workflow; assist USCIS adjudicators as they make a benefit determination; and provide a repository of data to assist with future benefit requests. In addition, USCIS ELIS processes and tracks all actions related to the case, including scheduling appointments and issuing decision notices and/or proofs of benefit.

3. *Automated Background Functions:* The Electronic Immigration System-3 Automated Background Functions SORN (DHS/USCIS–016) addresses the actions USCIS ELIS takes to detect duplicate and related accounts and identify potential national security concerns, criminality, and fraud to ensure that serious or complex cases receive additional scrutiny.

This SORN addresses the USCIS ELIS account and case management process for applicants. Information for Electronic Immigration System-2 Account and Case Management (USCIS ELIS Account and Case Management) is derived from multiple sources. The main source of information is the benefit request formally submitted by the Applicant or Representative (see Electronic Immigration System-1 Temporary Accounts and Draft Benefits Requests SORN). Upon the formal submission of a benefit request to USCIS, this information will no longer be considered temporary and is subject to the retention schedules provided for in this SORN.

DHS is revising the list of legacy forms that will be incorporated into USCIS ELIS. Additional forms from which information will be collected will be posted to the USCIS ELIS Web site as the system develops. New categories of records collected on this revised list of forms include immigration history (citizenship/naturalization certificate number, removals, statuses, explanations, etc.), appeals or motions to reopen or reconsider decisions, U.S. State Department-Issued Personal Identification Number (PID), vaccinations, and medical referrals. In the first release of USCIS ELIS, USCIS collects information from the following updated list of forms:

- I–90—Application to Replace Permanent Residence Card (1615–0082), 08/31/12;
- I–102—Application for Replacement/Initial Nonimmigrant Departure Document (1615–0079), 08/31/12;
- I–130—Petition for Alien Relative (1615–0012), 01/31/12 (as evidence);
- I–131—Application for Travel Document (1615–0013), 03/31/12;
- I–134—Affidavit of Support (1615–0014), 05/31/12 (as evidence);
- I–290B—Notice of Appeal or Motion (91615–0095), 05/31/12;
- I–508/I–508F—Waiver of Rights, Privileges, Exemptions, and Immunities (1615–0025), 11/30/11;
- I–539—Application to Extend/Change Nonimmigrant Status (1615–0003), 02/29/12;
- I–539—Application to Extend/Change Nonimmigrant Status (On-Line Application) (Pending);
- I–566—Interagency Record of Request—A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status (1615–0027), 01/31/11(as evidence);
- I–601—Application for Waiver of Grounds of Inadmissibility (1615–0029), 06/30/12;
- I–693—Report of Medical Examination and Vaccination Record (1615–0033), 10/31/11;
- I–765—Application for Employment Authorization (1615–0040), 09/30/11;
- I–821—Application for Temporary Protected Status (1615–0043), 10/31/13;
- I–912—Request for Fee Waiver (1615–0116), 10/31/12;
- AR–11—Alien Change of Address Card System (1615–0007), 09/30/11; and
- G–28 Notice of Entry of Appearance as Attorney or Accredited Representative (1615–0105), 04/30/12.

The information collected throughout the USCIS ELIS Account and Case Management process is necessary to conduct an accurate and thorough adjudication of a request for immigration benefits. USCIS ELIS will use information from an Applicant's benefit request; account updates; and/or responses to a request for evidence; as well as information obtained during an interview and/or a biometrics collection at an Application Support Center. The information provided by the Applicant or his or her Representative will be used to create or update USCIS ELIS accounts; gather any missing information; manage workflow; generate reports; assist USCIS in making a benefit determination; and provide a repository of data to assist with future benefit requests. Pursuant to 8 CFR 103.2 (a)(3), Co-Applicants may not access, modify, or participate in benefit requests submitted by the Applicant. However, Co-Applicants may create their own USCIS ELIS accounts as Applicants and submit their own benefit requests. USCIS personnel may input information as they process a case, including information from commercial sources, like LexisNexis or Dun and Bradstreet, to verify information provided by an Applicant or Co-Applicant in support of a request for a benefit. The USCIS ELIS Account and Case Management process will be used to process and track all actions related to the case, including scheduling appointments and issuing decision notices and/or proofs of benefit. USCIS ELIS will generate notices and notifications that will be available to individuals online, via email, text message, or postal mail. These notices will also be stored in the Applicant's USCIS ELIS account.

Results from Electronic Immigration System-3 Automated Background Functions (USCIS ELIS Automated Background Functions) will also be stored in the individual's USCIS ELIS account and/or case. This includes information from other USCIS, DHS, and federal government systems to confirm identity, determine eligibility, and perform background checks. USCIS ELIS Account and Case Management may store information from DHS systems including: DHS/USCIS–001—Alien File, Index, and National File Tracking System of Records; DHS/USCIS–007—Benefits Information System (BIS); DHS/USCIS/010—Asylum

Information and Pre-Screening; DHS/USCIS–006—Fraud Detection and National Security Data System (FDNS–DS); DHS/CBP–011—U.S. Customs and Border Protection TECS; DHS/ICE–001—Student and Exchange Visitor Information System (SEVIS); DHS/ICE–011—Immigration Enforcement Operational Records System (ENFORCE); DHS/USVISIT–001—Arrival and Departure Information System (ADIS); and DHS/USVISIT–0012—DHS Automated Biometric Identification System (IDENT). Furthermore, USCIS ELIS Account and Case Management may store information from systems outside of DHS, including: Department of State Consular Consolidated Database (CCD); JUSTICE/EOIR–001—Records and Management Information System; JUSTICE/FBI–002—FBI Central Records System; JUSTICE/FBI–009—Fingerprint Identification Records System (FIRS); and TREASURY/FMS–017—Collections Records—Treasury/Financial Management Service.

To protect Applicant, Co-Applicant, and Representative information, USCIS ELIS will employ role-based access controls to ensure internal users of the system do not have access to information beyond the functions of their employment. USCIS ELIS will also maintain audit logs of account access information by recording user identification and the date and time of access. Case and account histories are kept in order to track who created, deleted, or edited a record and when the change was made.

USCIS collects, uses, and maintains account and case management information pursuant to Sections 103 and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103 and 1360), and the regulations issued pursuant thereto; and Section 451 of the Homeland Security Act of 2002 (Pub. L. 107–296).

Consistent with DHS's information sharing mission, information stored in the Electronic Immigration Services-2 Account and Case Management SORN may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need-to-know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. USCIS provides information related to the immigration status of persons to employers participating in the USCIS E-Verify program (see DHS/USCIS–011 E-Verify Program SORN). In addition, USCIS provides the immigration status of persons applying for benefits from a government agency through the USCIS Systematic Alien Verification for Entitlements (SAVE) program (see DHS/USCIS–004 Systematic Alien Verification for Entitlements Program SORN).

DHS is issuing a Final Rule to exempt this system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), elsewhere in the **Federal Register**. Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/USCIS–015

SYSTEM NAME:

DHS/USCIS–015 Electronic Immigration System-2 Account and Case Management System of Records

SECURITY CLASSIFICATION:

Unclassified, sensitive, for official use only, law enforcement sensitive

SYSTEM LOCATION:

Records are maintained at the USCIS Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USCIS ELIS Account and Case Management stores and/or uses information about individuals who receive or petition for benefits under the Immigration and Nationality Act, as amended. These individuals include: Applicants and petitioners (Applicants); co-applicants, beneficiaries, derivatives, dependents, or other persons on whose behalf a benefit request is made or whose immigration status may be derived because of a relationship to an Applicant (Co-Applicants); attorneys and representatives accredited by the Board of Immigration Appeals (Representatives); and individuals that assist in the preparation of the benefit request.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about Applicants and Co-Applicants may include:

- USCIS ELIS account number
- Alien Registration Number(s)
- Family Name
- Given Name
- Middle Name
- Alias(es)
- Physical and mailing address(es):
  - Address
  - Unit Number
  - City
  - State
  - ZIP Code
  - Postal Code
  - Province
  - Country
- Date Of Birth
- Deceased Date
- Nationality
- Country of Citizenship
- City Of Birth
- State Of Birth
- Province Of Birth
- Country Of Birth
- Gender
- Marital Status
- Military Status
- Preferred Contact Method
- Phone Number

- Phone Extension
- Email Address
- Password
- Challenge questions and answers
- Immigration status
- Government-issued identification (*e.g.* passport, driver's license):
  - Document type
  - Issuing organization
  - Document number
  - Expiration date
- Benefit requested
- Signature (electronic or scanned physical signature)
- Pay.gov payment tracking number
- IP Address and browser information
- USCIS ELIS case submission confirmation number

Benefit-specific eligibility information (if applicable) may include:

- U.S. State Department-Issued Personal Identification Number (PID)
- Arrival/Departure Information
- Immigration history (citizenship/naturalization certificate number, removals, explanations, etc.)
- Family Relationships (e.g., Parent, Spouse, Sibling, Child, Other Dependents, etc., as well as polygamy, custody, guardianship, and other relationship practices)
- USCIS Receipt/Case Number
- Personal Background Information (e.g., involvement with national security threats, Communist party, torture, genocide, killing, injuring, forced sexual contact, limiting or denying others religious beliefs; service in military or other armed groups; work in penal or detention systems, weapons distribution, combat training, etc.)
- Health Information (*e.g.,* vaccinations, referrals, communicable disease, physical or mental disorder, prostitution, drug abuse, etc.)
- Education History
- Work History
- Financial Information (income, expenses, scholarships, savings, assets, property, financial support, supporter information, life insurance, debts, encumbrances, etc.)
- Social Security Number (SSN), if applicable
- Supporting documentation as necessary (*i.e.* birth certificate, appeals or motions to reopen or reconsider decisions, etc.)
- Physical Description
- Fingerprint(s)
- Photographs
- FBI Identification Number
- Fingerprint Identification Number
- Criminal Records
- Criminal and National Security background check information

Preparer information includes:

- Name
- Organization
- Physical and Mailing Addresses
- Email Address
- Phone and Fax Numbers
- Paid/Not Paid
- Relationship to Applicant

Representative information includes:

- Name
- Law Firm/Recognized Organization
- Physical and Mailing Addresses
- Phone and Fax Numbers
- Email Address
- Attorney Bar Card Number or Equivalent
- BAR Membership
- Accreditation Date
- BIA Representative Accreditation Expiration Date
- Law Practice Restriction Explanation

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system is in Sections 103 and 290 of the INA, as amended (8 U.S.C. 1103 and 1360), and the regulations issued pursuant thereto; and Section 451 of the Homeland Security Act of 2002 (Pub. L. 107–296).

PURPOSE(S):

The purpose of this system is to manage USCIS ELIS accounts; gather information related to a benefit request; manage workflow; generate reports; assist USCIS in making a benefit determination; and provide a repository of data to assist with future benefit requests. In addition, the USCIS ELIS Account and Case Management process will be used to process and track all actions related to the case, including scheduling appointments and issuing decision notices and/or proofs of benefit.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. If the U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity), or harm to the individual that relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or

implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

I. To courts, magistrates, administrative tribunals, opposing counsel, parties, and witnesses, in the course of immigration, civil, or criminal proceedings before a court or adjudicative body when:

1. DHS or any component thereof; or

2. Any employee of DHS in his or her official capacity; or

3. Any employee of DHS in his or her individual capacity where the agency has agreed to represent the employee; or

4. The United States, where DHS determines that litigation is likely to affect DHS or any of its components;

Is a party to litigation or has an interest in such litigation, and DHS determines that use of such records is relevant and necessary to the litigation, and that in each case, DHS determines that disclosure of the information to the recipient is a use of the information that is compatible with the purpose for which it was collected.

J. To an attorney or representative (as defined in 8 CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before USCIS, ICE, or CBP or the DOJ Executive Office for Immigration Review (EOIR).

K. To DOJ (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, where necessary to assist in the development of such agency's legal and/or policy position.

L. To the Department of State (DOS) in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements; or when DOS requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

M. To appropriate federal, state, local, tribal, territorial, or foreign governments, as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates to elicit information required by DHS to carry out its functions and statutory mandates.

N. To an appropriate federal, state, tribal, territorial, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence, and the disclosure is appropriate to the proper performance of the official duties of the person receiving the information.

O. To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit.

P. To an individual's current employer to the extent necessary to determine employment eligibility or to a prospective employer or government agency to verify an individual is eligible for a government-issued credential that is a condition of employment.

Q. To a former employee of DHS, in accordance with applicable regulations, for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

R. To the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

S. To the U.S. Senate Committee on the Judiciary or the U.S. House of Representatives Committee on the Judiciary when necessary to inform members of Congress about an alien who is being considered for private immigration relief.

T. To a federal, state, tribal, or local government agency and/or to domestic courts to assist such agencies in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the U.S. Government, or to obtain information that may assist DHS in collecting debts owed to the U.S. Government;

U. To an individual or entity seeking to post or arrange, or who has already posted or arranged, an immigration bond for an alien to aid the individual or entity in (1) identifying the location of the alien, or (2) posting the bond, obtaining payments related to the bond, or conducting other administrative or financial management activities related to the bond.

V. To a coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

W. Consistent with the requirements of the INA, to the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), or to any state or local health authorities, to:

1. Provide proper medical oversight of DHS-designated civil surgeons who perform medical examinations of both arriving aliens and of those requesting status as a lawful permanent resident; and

2. Ensure that all health issues potentially affecting public health and safety in the United States are being or have been adequately addressed.

X. To a federal, state, local, tribal, or territorial government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law.

Y. To the Social Security Administration (SSA) for the purpose of issuing a SSN and Social Security card to an alien who has made a request for a SSN as part of the immigration process and in accordance with any related agreements in effect between the SSA, DHS, and DOS entered into pursuant to 20 CFR 422.103(b)(3); 422.103(c); and

422.106(a), or other relevant laws and regulations.

Z. To federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat to national or international security, or where such use is to conduct national intelligence and security investigations or assist in anti-terrorism efforts.

AA. To third parties to facilitate placement or release of an individual (*e.g.,* at a group home, homeless shelter, etc.) who has been or is about to be released from DHS custody but only such information that is relevant and necessary to arrange housing or continuing medical care for the individual.

BB. To foreign governments for the purpose of coordinating and conducting the removal of individuals to other nations under the INA; and to international, foreign, and intergovernmental agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

CC. To a federal, state, local, territorial, tribal, international, or foreign criminal, civil, or regulatory law enforcement authority when the information is necessary for collaboration, coordination, and de-confliction of investigative matters, prosecutions, and/or other law enforcement actions to avoid duplicative or disruptive efforts and to ensure the safety of law enforcement officers who may be working on related law enforcement matters.

DD. To the DOJ Federal Bureau of Prisons and other federal, state, local, territorial, tribal, and foreign law enforcement or custodial agencies for the purpose of placing an immigration detainer on an individual in that agency's custody, or to facilitate the transfer of custody of an individual from DHS to the other agency. This will include the transfer of information about unaccompanied minor children to HHS to facilitate the custodial transfer of such children from DHS to HHS.

EE. To federal, state, local, tribal, territorial, or foreign governmental or quasi-governmental agencies or courts to confirm the location, custodial status, removal, or voluntary departure of an alien from the United States, in order to facilitate the recipients' exercise of responsibilities pertaining to the custody, care, or legal rights (including issuance of a U.S. passport) of the removed individual's minor children, or the adjudication or collection of child support payments or other debts owed by the removed individual.

FF. To a federal, state, tribal, territorial, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

GG. To the Department of Treasury to process and resolve payment issues.

HH. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by any of the data elements listed above or a combination thereof.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need-to-know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCIS is currently working with the National Archives and Records Administration (NARA) to establish and publish the proposed USCIS ELIS records retention schedules. USCIS currently plans to retain all account information and supporting evidence for 100 years after the account holder's date of birth, or 15 years from last action, whichever is later. Permanent accounts (e.g. for applicants who currently have A-files) and related case snapshots and supporting evidence are permanent and will be transferred to the custody of the NARA 100 years after the individual's date of birth. Non-immigrant case information and supporting evidence will be stored for 15 years from last action.

U.S. citizen accounts and cases will be archived internally after five years. All accounts and cases will be put in an inactive status 15 years after last action.

Records that are linked to national security, law enforcement, or fraud investigations or cases will remain accessible for the life of the related activity, to the extent retention for such purposes exceeds the normal retention period for such data in USCIS ELIS. USCIS is reviewing its needs for the information as it transitions to a fully electronic environment and may amend its retention plans and schedules as needed.

USCIS proposes that, in compliance with NARA General Records Schedule 24, section 6, ''User Identification, Profiles, Authorizations, and Password Files,'' internal USCIS personnel accounts will be destroyed or deleted six years after the account is terminated, or when no longer needed for investigative or security purposes, whichever is later.

SYSTEM MANAGER AND ADDRESS:

The DHS system manager is the Chief, Records Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529.

NOTIFICATION PROCEDURE:

Applicants may access and amend this information by logging in to their USCIS ELIS account. Pursuant to 8 CFR 103.2(a)(3), Co-Applicants may access their information by logging in to USCIS ELIS after the benefit request has been approved or denied. Further, individuals seeking notification of and access to any record contained in this

system of records, or seeking to contest its content, may submit a request in writing to the National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010. Specific FOIA contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–(866) 431–0486. In addition you should:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from the Applicant or his or her Representative. USCIS personnel may input information as they process a case, including information from commercial sources, like LexisNexis or Dunn and Bradstreet, to verify whether an Applicant or Co-Applicant is eligible for the benefit requested. USCIS ELIS Account and Case Management will also store and use information from the following USCIS, DHS, and other federal agency systems of records:

- DHS/USCIS–001—Alien File, Index, and National File Tracking System of Records;
- DHS/USCIS–007—Benefits Information System (BIS);
- DHS/USCIS–010—Asylum Information and Pre-Screening;
- DHS/USCIS–006—Fraud Detection and National Security Data System (FDNS–DS);
- DHS/USCIS–014—Electronic Immigration System-1 Temporary Accounts and Draft Benefit Requests System of Records;
- DHS/USCIS–016—Electronic Immigration System-3 Automated Background Functions System of Records;
- DHS/CBP–011—U.S. Customs and Border Protection TECS;
- DHS/ICE–001—Student and Exchange Visitor Information System (SEVIS);
- DHS/ICE–011—Immigration Enforcement Operational Records System (ENFORCE);
- DHS/USVISIT–001—Arrival and Departure Information System (ADIS);
- DHS/USVISIT–0012—DHS Automated Biometric Identification System (IDENT);
- Department of State Consular Consolidated Database (CCD);
- JUSTICE/EOIR–001—Records and Management Information System;
- JUSTICE/FBI–002—FBI Central Records System;
- JUSTICE/FBI–009—Fingerprint Identification Records System (FIRS); and
- TREASURY/FMS–017—Collections Records—Treasury/Financial Management Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Additionally, many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

Dated: November 2, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–29451 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0034; OMB No. 1660–0086]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program—Mortgage Portfolio Protection Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the National Flood Insurance Program Mortgage Portfolio Protection program, which is an option that companies participating in the National Flood Insurance Program can use to bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements. To participate in the Mortgage Portfolio Protection Program, the company must agree to adhere to certain guidelines and requirements in the implementation package published by the Associate Administrator for Federal Insurance and Mitigation Administration. The Write Your Own insurance company signs documentation noting they agree to adhere to these requirements.

DATES: Comments must be submitted on or before January 17, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0034. Follow

the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA-POLICY@dhs.gov*. Include Docket ID FEMA–2011–0034 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Bernstein, Program Analyst; Mitigation Directorate, (202) 212–2113 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized in Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973), and is codified as 42 U.S.C. 4001, *et sec.* Public Law 103–325 (1994) expands upon this and provides federally supported flood insurance for existing buildings exposed to flood risk. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or flood hazard areas of communities that are participating in the program.

The Mortgage Portfolio Protection program (MPPP) is an option that companies participating in the NFIP can use to bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the three public laws described above. Section 62.23(l)(1) of Title 44 of the Code of Regulations (CFR), with 44 CFR Appendix A to Part 62 implements the MPPP requirements for specific notices and other procedures that must be adhered to. Insurance companies applying for or renewing their participation in the Write Your Own (WYO) program must indicate that they will adhere to the requirements of the MPPP if they are electing to voluntarily participate in the MPPP. Per 44 CFR 62.23(l)(2), WYO companies participating in the MPPP must provide a detailed implementation package, known as the Mortgage Portfolio Protection Program Agreement, to the lending companies who are requesting insurance coverage and the lender must acknowledge receipt.

Collection of Information

Title: National Flood Insurance Program—Mortgage Portfolio Protection Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0086.

Form Titles and Numbers: None.

Abstract: A WYO company that wishes to participate in the MPPP must review the information listed in the MPPP Agreement and complete the acknowledgement to participate in the MPPP or elect to continue under just the WYO guidelines. A lender wishing to obtain flood insurance through a MPPP participating insurance company must review the Financial Assistance/Subsidy Arrangement and acknowledge the terms so that they can properly apply for flood insurance through this program.

Affected Public: Business or other non-profits.

Estimated Total Annual Burden Hours: 171 hours.

Estimated Cost: There is no annual reporting and recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Gary L. Anderson,

Acting Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–29468 Filed 11–14–11; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3342–EM; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Connecticut (FEMA–3342–EM), dated October 31, 2011, and related determinations.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Connecticut is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of October 31, 2011.

All eight counties in the State of Connecticut for debris removal and emergency protective measures (Categories A and B) and direct federal assistance for debris removal (Category A) under the Public Assistance Program for a period of 72 hours, such period to be selected by the state. Direct federal assistance for emergency protective measures (Category B) under the Public Assistance Program, without any time limitations, has already been designated for this emergency declaration.

(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. 2011–29469 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–90; Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–90, Application to Replace Permanent Resident Card.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 17, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 or via email at *uscisfrcomment@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0082 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–(800) 375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Replace Permanent Resident Card.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–90; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used by USCIS to determine eligibility to replace a Lawful Permanent Resident Card.

(5) *An estimate of the total number of annual respondents and the amount of time estimated for an average respondent to respond:* 540,000 responses at 55 (.916) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 494,640 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: November 9, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–29492 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–526, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–526, Immigrant Petition by Alien Entrepreneur.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. An information collection notice was previously published in the **Federal Register** on August 12, 2011, at 76 FR 50238, allowing for a 60-day public comment period. USCIS received two comments on the 60-day notice. A discussion of the comments and USCIS' responses are addressed in item 8 of the supporting statement that can be viewed at: *http://www.regulations.gov*.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 or via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at (202) 395–5806 or via email at *oira_submission@omb.eop.gov*.

When submitting comments by email please make sure to add OMB Control

Number 1615–0026 in the subject box. Written comments and suggestions from the public and affected agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–526. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Businesses.* This form is used by the USCIS to determine if an alien can enter the U.S. to engage in commercial enterprise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,742 responses at 1 hour and 15 minutes (1.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,678 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone number (202) 272–8377.

Dated: November 9, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–29493 Filed 11–14–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf (OCS), Central and Western Gulf of Mexico, Oil and Gas Lease Sales for Years 2012–2017

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations; Correction.

SUMMARY: On March 15, 2011, BOEM (formerly the Bureau of Ocean Energy Management, Regulation and Enforcement) published a notice in the **Federal Register** (76 FR 14040), entitled ''Call for Information and Nominations.'' This document describes a correction to the sale numbers that were identified in the Call. As previously published, the sale numbers contained an error that will prove to be misleading.

Section 2—Purpose of Call, Should Be Changed to the Following Sale Numbers

Lease sale, planning area	Sale year
Sale 229, Western GOM	2012
Sale 227, Central GOM	2013
Sale 233, Western GOM	2013
Sale 231, Central GOM	2014
Sale 238, Western GOM	2014
Sale 235, Central GOM	2015
Sale 246, Western GOM	2015
Sale 241, Central GOM	2016
Sale 248, Western GOM	2016
Sale 247, Central GOM	2017

DATES: This correction is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Carrol Williams, BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2803.

Dated: October 25, 2011.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2011–29487 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–ES–2011–N236; FF09E50000–FXES11170900000–B3]

Proposed Information Collection; Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on May 31, 2012. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by January 17, 2012.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email). Please include ''1018–0119'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (email) or (703) 358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4 of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) specifies the process by which we can list species as threatened or endangered. When we consider whether or not to list a species, the ESA requires us to take into account the efforts being made by any State or any political subdivision of a State to protect such species. We also take into account the efforts being made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or called for in such documents could prevent some species

from becoming so imperiled that they meet the definition of a threatened or endangered species under the ESA.

The Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100) encourages the development of conservation agreements/plans and provides certainty about the standard that an individual conservation effort must meet for us to consider whether it contributes to forming a basis for making a decision about the listing of a species. PECE applies to ''formalized conservation efforts'' that have not been implemented or have been implemented but have not yet demonstrated if they are effective at the time of a listing decision.

Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species) identified in a conservation agreement, conservation plan, management plan, or similar document. The development of such agreements/plans is voluntary. There is no requirement that the individual conservation efforts included in such documents be designed to meet the standard in PECE.

II. Data

OMB Control Number: 1018–0119.

Title: Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Description of Respondents: Primarily State, local, or tribal governments. However, individuals, businesses, and not-for-profit organizations could develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement/plan.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
Original Agreement	4	4	2,000	8,000
Monitoring	7	7	600	4,200
Reporting	7	7	120	840
Totals	18	18	.....	13,040

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 7, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–29387 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N238; 91100–3740–GRNT–7C]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Migratory Birds and Wetlands Conservation Grant Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2011. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before December 15, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email). Please include ''1018–0100'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (email) or (703) 358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0100.

Title: Migratory Birds and Wetlands Conservation Grant Programs.

Service Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Domestic and foreign individuals, businesses and other for-profit organizations;

educational organizations; not-for-profit institutions; and Federal, State, local, and/or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
NAWCA Small Grants—Applications	87	87	58	5,046
NAWCA Small Grants—Reports	109	109	33	3,597
NAWCA U.S. Standard Grants—Applications	77	77	215	16,555
NAWCA Canadian and Mexican Standard Grants—Applications	32	32	80	2,560
NAWCA Standard Grants—Reports	188	188	43	8,084
NMBCA Grant Applications	106	106	62	6,572
NMBCA Reports	71	71	42	2,982
TOTALS	670	670		45,396

Abstract: The Division of Bird Habitat Conservation administers grant programs associated with the North American Wetlands Conservation Act (NAWCA), Public Law 101–233, and the Neotropical Migratory Bird Conservation Act (NMBCA), Public Law 106–247. Currently, information that we collect for NMBCA grants is approved under OMB Control No. 1018–0113, which expires March 31, 2012. We are proposing to consolidate NAWCA and NMBCA grants under OMB Control No. 1018–0100. If OMB approves this request, we will discontinue OMB Control Number 1018–0113.

North American Wetlands Conservation Act Grants

NAWCA provides matching grants to organizations and individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico for the benefit of wetlands-associated migratory birds and other wildlife. There is a Standard and a Small Grants Program. Both are competitive grants programs and require that grant requests be matched by partner contributions at no less than a 1-to-1 ratio. Funds from U.S. Federal sources may contribute to a project, but are not eligible as match.

The Standard Grants Program supports projects in Canada, the United States, and Mexico that involve long-term protection, restoration, and/or enhancement of wetlands and associated uplands habitats. In Mexico, partners may also conduct projects involving technical training, environmental education and outreach, organizational infrastructure development, and sustainable-use studies.

The Small Grants Program operates only in the United States. It supports the same types of projects and adheres to the same selection criteria and administrative guidelines as the U.S. Standard Grants Program. However, project activities are usually smaller in scope and involve fewer project dollars. Grant requests may not exceed $75,000, and funding priority is given to grantees or partners new to the NAWCA Grants Program.

We publish notices of funding availability on the Grants.gov Web site at *http://www.grants.gov* as well as in the Catalog of Federal Domestic Assistance at *http://cfda.gov.* To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the North American Wetlands Conservation Council and the requirements of NAWCA. Materials that describe the program and assist applicants in formulating project proposals are available on our Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA.* Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 1999.

Neotropical Migratory Bird Conservation Act

NMBCA establishes a matching grant program to fund projects that promote the long-term conservation of neotropical migratory birds and their habitats in the United States, Canada, Latin America, and the Caribbean. Principal conservation actions supported are the protection and management of populations; maintenance, management, protection and restoration of habitat; research and monitoring; law enforcement; and community outreach and education. We publish notices of funding availability on the Grants.gov Web site as well as in the Catalog of Federal Domestic Assistance. To compete for grant funds, partnerships submit applications that describe in substantial detail project locations, project resources, future benefits, and other characteristics that meet the standards established by the U.S. Fish and Wildlife Service and the requirements of NMBCA.

Materials that describe the program and assist applicants in formulating project proposals for consideration are available on our Web site at *http://www.fws.gov/birdhabitat/Grants/NMBCA/index.shtm.* Persons who do not have access to the Internet may obtain instructional materials by mail. We have not made any major changes in the scope and general nature of the instructions since the OMB first approved the information collection in 2002.

Comments: On May 24, 2011, we published in the **Federal Register** (76 FR 30186) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 25, 2011. We received one comment. The commenter opposed these grant programs, but did not address the information collection requirements. We did not make any changes as a result of this comment.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your

address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 7, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–29386 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2011–N237; FXFR1334088TWG0W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9:30 a.m. to 5 p.m. on Friday, December 9, 2011.

ADDRESSES: The meeting will be held at the Trinity County Library, 351 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Robin Schrock, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; email: *rschrock@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- Key questions for Restoration Program guidance and assessment,
- Channel rehabilitation program review and planning,
- Gravel augmentation program,
- Watersheds work program,
- TRRP budget update,
- Hatchery practices review,
- Fish marking,
- Executive Director's report,
- Trinity Management Council Chair's report, and
- Designated Federal Officer topics.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: November 8, 2011.

Randy A. Brown,

Deputy Field Supervisor, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2011–29420 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX12RB00CMF2400]

Agency Information Collection Activities: Proposed Information Collection; Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice; request for comments for a new information collection.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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.

DATES: To ensure that we are able to consider your comments on this IC we must receive them on or before January 17, 2012.

ADDRESSES: Direct all written comments on this IC to Shari Baloch, Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive mail stop 807 (mail) or *smbaloch@usgs.gov* (email). Please reference IC 1028–NEW (ECFIRA) in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. Lynne Koontz, U.S. Geological Survey, 2150–C Centre Ave, Fort Collins, CO 80526 (mail); *koontzl@usgs.gov* (email); or: (970) 226–9384 (phone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the American Restoration and Recovery Act (ARRA) (Pub. L. 111–5) and via U.S. Department of the Interior (DOI) and U.S. Department of Agriculture (USDA) management agencies, restoration projects to mitigate environmental damages and to improve the health and resiliency of terrestrial, freshwater and marine ecosystems are currently in progress. Federal investments in ecosystem restoration and monitoring protect Federal trusts, ensure public health and safety, and preserve and enhance essential ecosystem services; furthermore, these investments create jobs. An emphasis on quantifying the relationship between job creation and investments in ecological restoration is evident in the goals of the ARRA, Agriculture Secretary Vilsack's emphasis on tying management actions to rural jobs (Farm Service Agency Office of Communications, 2010), and Interior Secretary Salazar's annual report on the Department's economic contribution to the Nation's economy (Department of the Interior, 2009). The need to better understand the connection between restoring the health and productivity of ecosystems and the resulting economic benefits to local communities is also illustrated in a recent report by the President's Council of Advisors on Science and Technology, which calls on the federal government to better prioritize the approximately $10 billion it spends each year on ecological restoration and biodiversity preservation. Though a few small, localized studies have been carried out to measure jobs created or supported by investments in certain types of ecosystem restoration, they are not useful at a national scale due to regional variations and variations in study methods and objectives. Without data on the proportion of restoration costs typically spent on labor, equipment, supplies and other expenditures, the economic contribution generated by federal investments in restoration cannot be estimated.

The USGS plans to conduct a nationwide telephone survey to elicit expenditure pattern information from contractors that conduct restoration

work for the DOI and the USDA. The objective of this survey is to estimate the economic job and income contribution current and proposed restoration activities generate in surrounding communities. Collection of these data is necessary to improve agency decision making on individual restoration projects, to prioritize spending across restoration projects, and to meet internal guidelines for credible economic analysis. This notice will cover the development and pretesting of the final survey instrument.

II. Data

OMB Number: 1028–New.

Title: Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems.

Type of Request: This is a new collection.

Affected Public: DOI and USDA restoration contractors registered on the Federal Procurement Data System.

Respondent Obligation: Voluntary.

Frequency of Collection: One time only.

Estimated Total Number of Annual Respondents: 7,500.

Estimated Total Annual Responses: 6,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,500 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

Comments are invited on: (1) Whether or not the collection of information is necessary, including the practical utility of the information being gathered; (2) the accuracy of the burden hour estimate for this collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 20, 2011.

Ione Taylor,

Associate Director, Energy and Minerals, and Environmental Health Programs.

[FR Doc. 2011–29425 Filed 11–14–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2013 or Calendar Year 2013

AGENCY: Office of Self-Governance, Bureau of Indian Affairs, Interior.

ACTION: Notice of Application Deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2012, deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2013 or calendar year 2013.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2012.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355–G–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone (202) 208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to the other tribes that are served by the same Bureau of Indian Affairs (BIA) agency as the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

The regulations at 25 CFR 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2013 and calendar year 2013. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2013 or calendar year 2013 must respond to this notice, except for those tribes/consortia which are: (1) Currently involved in negotiations with the Department; or (2) one of the 105 tribal entities with signed agreements.

Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program, which expires November 30, 2012.

Dated: November 1, 2011.

Donald E. Laverdure,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–29390 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 51793, LLCA9300000, L54100000]

Notice of Realty Action: Conveyance of Federally Owned Mineral Interests in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The surface owner, George Sullivan, filed an application on April 5, 2010 for the conveyance of the federally-owned mineral interests of a 10.98 acre tract of land in Kern County, California. Publication of this notice temporarily segregates the mineral interests in the land covered by the application from appropriation under

the mining and mineral leasing laws for up to 2 years to determine the suitability of the federally-owned mineral interests for conveyance pursuant to Section 209 of the Federal Land Policy and Management Act of October 21, 1976.

DATES: Interested persons may submit written comments to the Bureau of Land Management (BLM) at the address listed below. Comments must be received no later than December 30, 2011.

ADDRESSES: Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, California 95825. Detailed information concerning this action is available for review at this address.

FOR FURTHER INFORMATION CONTACT: Elizabeth Easley, Realty Specialist, BLM, California State Office, 2800 Cottage Way, Sacramento, California 95825, or phone (916) 978–4673. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The land referred to in this notice consists of a 10.98 acre tract situated in Kern County, California, described as follows:

San Bernardino Meridia

T. 11 N., R. 24 W.,

Sec. 14, being a portion of the NW¼NW¼ described as:

Beginning at the northwest corner of said sec. 14; thence north 89°03′10″ east, a distance of 972.60 feet to a point on the northwest line of California State Highway 166, thence south 43°49′00″ west along the northwest line of said highway, a distance of 1181.86 feet; thence southwesterly along the northwest line of said highway on the arc of a circle having a radius of 730 feet; being concave to the southeast with an interior angle of 21°46′28″, a distance of 277.47 feet to the west line of said section 14; thence north 0°13′30″ west along the west line of said section, a distance of 1068.04 feet to the point of beginning.

Excepting therefrom that portion as deeded to the State of California recorded March 3, 1981 in book 5355 page 2425 of official records, file no. 020797. The area described contains 10.98 acres in Kern County.

Under certain conditions, Section 209(b) of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1719 authorizes the sale and conveyance of the federally-owned mineral interests in land when the surface estate is not federally-owned.

The objective is to allow consolidation of the surface and subsurface mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) Where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

An application was filed for the sale and conveyance of the federally-owned mineral interests in the above-described tract of land. Subject to valid existing rights, on November 15, 2011 the federally-owned mineral interests in the land described above are hereby segregated from appropriation under the public land laws, including the mining laws, while the application is being processed to determine if either one of the two specified conditions exists, and if so, to otherwise comply with the procedural requirements of 43 CFR part 2720. The temporary segregative effect shall terminate: (1) Upon issuance of a patent or other document of conveyance as to such mineral interests; (2) Upon final rejection of the application; or (3) November 15, 2013, whichever occurs first.

Comments: Your comments are invited. Please submit all comments in writing to Elizabeth Easley at the address listed above. Include your address, phone number, email address, or other personal identifying information in your comment. You should be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2720.1–1(b).

Tom Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2011–29475 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0059

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

Summary: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority to collect information for our Grants for Program Development and Administration and Enforcement, State and Tribal Reclamation Grants, and associated forms. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0059.

DATES: Comments on the proposed information collection must be received by January 17, 2012, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783 or electronically at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR parts 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative); 30 CFR part 735 (Grants for Program Development and Administration and Enforcement); 30 CFR Part 885 (Grants for Certified States and Indian Tribes); and 30 CFR Part 886 (State and Tribal Reclamation Grants). OSM will request a 3-year term of approval for each information collection activity. Responses are required to obtain a benefit for this collection.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the

public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Parts 735, 885 and 886 — Grants to States and Tribes.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Semi-annually and annually.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 140.

Total Annual Burden Hours: 918 hours.

Total Annual Non-Wage Cost: $0.

Dated: November 7, 2011.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–29202 Filed 11–14–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

[OMB Number 1125–0001]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Application for Cancellation of Removal (42A) for Certain Permanent Residents; (42B) and Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Cancellation of Removal for Certain Permanent Residents (42A); Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (42B).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: EOIR–42A, EOIR–42B. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be removable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 25,627 respondents will complete the form annually with an average of 5 hours, 50 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 149,405 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–29373 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0002]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Notice of Appeal From a Decision of an Immigration Judge

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or

associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin M. Stutman, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: A party (either the U.S. Immigration and Customs Enforcement of the Department of Homeland Security or the respondent/applicant) who appeals a decision of an Immigration Judge to the Board of Immigration Appeals (Board). Other: None. Abstract: A party affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 19,201 respondents will complete the form annually with an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 9,600.5 total burden hours associated with this collection annually.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–29374 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0024]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Report of Firearms Transactions

ACTION: 60-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicholas O' Leary, *Renewal5300@atf.gov,* Firearms Industry Programs Branch, 99 New York Avenue NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
— Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
— Enhance the quality, utility, and clarity of the information to be collected; and
— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Firearms Transactions.

(3) *Form Number:* ATF F 5300.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The information collection documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations, and establishes the person(s) involved in the transactions.

(5) *An estimate of the total number of respondents and the amount of time estimated*

for an average respondent to respond: It is estimated that 790 respondents will complete a 1 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 790 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, 2 Constitution

Square, Room 2E–502, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–29375 Filed 11–14–11; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0046]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer

ACTION: 30-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 174, page 55706 on September 8, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 15, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Barbara Terrell at (202) 648–7190 or the DOJ Desk Officer at (202) 395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: none.

Need for Collection

The letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will file the letter within approximately 5 seconds.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 69 total burden hours associated with this collection.

If additional information is required contact: JerriMurray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–29377 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0067]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data

ACTION: 60-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nicholas O'Leary, *Nicholas.oleary@atf.gov.* Firearms Industry Programs Branch, 99 New York Avenue NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

Firearms manufacturers records are permanent records of all firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,694 respondents will take 3 minutes to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 76,611 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–29379 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0060]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Firearms Disabilities for Nonimmigrant Aliens

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nilda Santamaria, *nilda.santamaria@atf.gov* Firearms Industry Programs Branch, 99 New York Avenue NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Disabilities for Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The nonimmigrant alien information will be used to determine if a nonimmigrant alien is eligible to purchase, obtain, possess, or import a firearm. Nonimmigrant aliens also must maintain the documents while in possession of firearms or ammunition in the United States for verification purposes.

(5) *An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond:* It is estimated that 12,100 respondents will take an estimated 6 minutes to report the information.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,210 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–29378 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0031]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Records of Acquisition and Disposition; Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List

ACTION: 60-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 17, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Majors, *William.Majors@atf.gov,* Firearms and Explosives Import Branch, 244 Needy Road, Martinsburg, West Virginia 25405. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Imports List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The records are of imported items that are on the United States Munitions Import List. The importers must register with ATF and must file an intent to import specific items as well as certify to the Bureau that the items were in fact received. The records are maintained at the registrant's business premises where they are available for inspection by ATF officers during compliance inspections or criminal investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 5 hours to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–29376 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Connected Media Experience, Inc.

Notice is hereby given that, on October 3, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Connected Media Experience, Inc. (''CMX'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Marcos Caceres (Individual Member), Oslo, Norway; and Ryan Provost (Individual Member), Suffern, NY, have been added as parties to this venture. Also, Gracenote, Emeryville, CA; and Samsung Electronics Co., LTD, Gyeonggi-Do, Republic of Korea, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on July 15, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 19, 2011 (76 FR 52013).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–29080 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. D/B/A International Sematech

Notice is hereby given that, on August 4, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. (''the Act''), Sematech, Inc. (which is doing business as International SEMATECH) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and its nature and objectives. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Taiwan Semiconductor Manufacturing Corporation, Inc., Hsinchu, Taiwan; United Microelectronics Corporation, Inc., Hsin Chu City, Taiwan; Samsung Electronics Co., Ltd., Yongin-City, Gyeonggi-Do, Republic of Korea; College of Nanoscale Science and Engineering of the University of Albany, State University of New York, Albany, NY; Fuller Road Management Corporation, Inc. of the University of Albany, State University of New York, Albany, NY; Tokyo Electron Limited, Minato-ku, Tokyo, JAPAN; Canon Anelva Corporation, Kanagawa, Japan; Asahi Glass Corporation, Chiyodaku, Tokyo, Japan; FEI Company, Hillsboro, OR; SUSS MicroTec AG, Thiendorf, Germany; ASML Holding N.V., Veldhoven, The Netherlands; KLA-Tencor Corporation, Milpitas, CA; Qualcomm Incorporated, San Diego, CA; Nanosys Inc., Palo Alto, CA; 4DS Inc., Fremont, CA; Intel, Inc., Santa Clara, CA; TSMC, Hsinchu, Taiwan; Hynix Semiconductor Inc., Geonggi-Do, Republic of Korea; Tokyo Electron Limited, Minato-ku, Tokyo, Japan; Rudolph Technologies Inc., Flanders, NJ; ON Semiconductor, Phoenix, AZ; NEXX Systems Inc., San Francisco, CA; Atotech Deutchland GmbH, Berlin, Germany; Altera Corporation, San Jose, CA; Qualcomm Incorporated, San Diego, CA; Analog Devices Inc., Norwood, MA; LSI Corporation, Milpitas, CA; Lasertec Corporation, Yokohama, Japan; ASE Group, Kaohsiung, Taiwan; Fujifilm Electronic Materials, Shizuoka, Japan; Nissan Chemical Industries Ltd., Tokyo, Japan; Sumitomo Electric Industries, Ltd., Tokyo, Japan; JSR Corporation, Sunnyvale, CA; AZ Electronic Materials, Somerville, NJ; Shin-Etsu Chemical Co., LTD, Niigata, Japan; Rohm and Hass Company, Marlborough, MA; Texas Instruments, Inc., Dallas, TX; Micron Technology, Inc., Boise, ID; National Semiconductor, Inc., Santa Clara, CA; Renesas Technology Corporation, Tokyo, Japan; Toshiba Corporation, Yokohama, Japan; Panasonic Semiconductor Discrete Devices Co., Ltd., Kyoto, Japan; Applied Materials Inc., Santa Clara, CA; Edwards Limited, Tewksbury, MA; Texas Instruments, Dallas, TX; Matheson Tr-Gas Inc., Basking Ridge, NJ, have been added as parties to this venture.

Also, Texas Instruments, Inc., Dallas, TX; Freescale Semiconductor, Inc., Austin, TX; Infineon Technologies AG, Dresden, Germany; Qimonda AG, Dresden, Germany; and Advanced Technology Development Facility, Inc., Austin, TX, have withdrawn as parties to this venture.

Additionally, International SEMATECH has begun to recruit and admit program members that only join certain discrete projects and thus only have access to information and intellectual property created under the discrete projects that these lower-tiered members join. Hence, International SEMATECH has four new classes of membership in addition to its traditional core membership: (1) Program—includes integrated circuit manufacturers, semiconductor design companies, and assembly and packaging companies that choose to pay for and receive information and other intellectual property developed in any of Sematech's technical divisions; (2) Associate—includes companies that design, test, make, market, or support materials, equipment, processes, software, systems, or facilities for manufacturing semiconductors and that pay for and receive access to information and other intellectual property that arise under discrete Sematech-led projects; (3) Extreme Ultraviolet Lithography Mask Infrastructure (''EMI'')—includes among its members integrated circuit manufacturers and semiconductor mask makers; and (4) 3D Enablement Center—created to finance and conduct research related to three dimensional (3D) interconnect technologies, which the chip manufacturing and design industries perceive to be a means available to extend Moore's law without the enormous expense associated with development of new lithographic technologies.

International SEMATECH created a new subsidiary called International Sematech Manufacturing Initiative, Inc. (''ISMI''), which is also a Delaware 501(c)(6) membership corporation organized to finance and conduct research and development related to solving semiconductor manufacturing problems. ISMI's emphasis is on solving today's semiconductor manufacturing challenges such as enhancing semiconductor manufacturing equipment productivity, contributing to increased automation in the operation of semiconductor fabrication facilities (''fabs'') and reducing fabs' electricity and water consumption. Sematech created the 450 LLC to finance and conduct research and development necessary to catalyze the introduction into the marketplace of semiconductor manufacturing equipment capable of handling silicon wafers with a diameter of 450mm. The purpose of the 450 LLC is to aggregate funds from integrated circuit manufacturers to finance and participate in this endeavor.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, International SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on June 16, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 4, 2003 (68 FR 45855).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–29079 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Energy Storage System Evaluation and Safety

Notice is hereby given that, on October 6, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Energy Storage System Evaluation and Safety (''EssEs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the

venture are: Allison Transmission, Inc., Indianapolis, IN; BAE Systems, Johnson City, NY; Cummins, Inc., Columbus, IN; Deere & Company, Moline, IL; Tata Motors Limited, Mumbai, India; Caterpillar Inc., Peoria, IL; China Automotive Technology and Research Center (CATARC), Tianjin, People's Republic of China; and Shanghai E-Propulsion Auto Technology Co., Ltd., Shanghai, People's Republic of China. The general area of EssEs's planned activity is to develop detailed cell level data on current or near market technology across a meaningfully diverse number of manufacturers to allow a relative comparison between available technologies. The program will provide performance, life, abuse and consistency of manufacturing test data for member-selected systems in a private, independent third party laboratory format (nongovernmental). This will provide members with data required to assess the pertinent performance characteristics of various battery topologies, chemistries and manufacturers to assist in the selection of cells for a vehicular energy storage system. Additionally, the level of data and the detail in which it is provided will be sufficient to aid in the development of models, pack integration work and thermal management strategy development.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–29078 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Brush Manufacturers Association

Notice is hereby given that, on October 12, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Brush Manufacturers Association (''ABMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Brush Manufacturers Association, Aurora, IL. The nature and scope of ABMA's standards development activities are: To establish the rules and specifications for safety that apply in the design, use and care of power driven brushing tools, which are specifically defined and covered under the scope of the standard. It includes specifications for shanks, adapters, flanges, collets, chucks and safety guards and the rules for proper storage, handling mounting and use of brushes. Information on the wording of the labels that appear on the brooms, mops or their packaging will help ensure that accurate information on content is presented to the consumer/user.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–29076 Filed 11–14–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,076]

Nexergy, Inc., Including On-Site Leased Workers From Act-I Staffing, Kelly Services and Snider-Blake Personnel, Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Western Services, Inc., Columbus, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 14, 2011, applicable to workers of Nexergy, Inc., including on-site leased workers from ACT–I Staffing, Snider-Black Personnel and Kelly Services, Columbus, Ohio. The workers are engaged in activities related to the production of battery packs, printed circuit boards and wire harnesses. The notice was published in the **Federal Register** on July 8, 2011 (76 FR 40401).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Snider-Blake Personnel employed on-site at the Columbus, Ohio location of Nexergy, Inc. had their wages reported under a separate unemployment insurance (UI) tax account under the name Western Services, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by actual/likely increase in imports following a shift abroad.

The amended notice applicable to TA–W–80,076 is hereby issued as follows:

All workers of Nexergy, Inc., including on-site leased workers from ACT–I Staffing, Kelly Services and Snider-Blake Personnel, including workers whose unemployment insurance (UI) wages are reported through Western Services, Inc., Columbus, Ohio, who became totally or partially separated from employment on or after March 28, 2010, through June 14, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of October 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–29395 Filed 11–14–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 25, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 25, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of October 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—17 TAA PETITIONS INSTITUTED BETWEEN 10/17/11 AND 10/21/11

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80520	Positronic Industries, Inc. (Workers)	Mount Vernon, MO	10/17/11	10/13/11
80521	Billhorn Converters, LLC, Northwest Division (State/One-Stop).	Kalama, WA	10/17/11	10/12/11
80522	LA Darling Company LLC (Workers)	Paragould, AR	10/17/11	10/14/11
80523	Siemens Water Technologies (Company)	Vineland, NJ	10/17/11	10/14/11
80524	Townsends (Workers)	Mocksville, NC	10/17/11	10/07/11
80525	Long Elevator & Machine Co Inc. (Workers)	Riverton, IL	10/17/11	10/12/11
80526	BASF Corporation (Company)	Belvidere, NJ	10/19/11	10/11/11
80527	MAHLE Engine Components USA, Inc. (Company)	Trumbull, CT	10/19/11	10/17/11
80528	Timbron International, Inc. (State/One-Stop)	Stockton, CA	10/19/11	10/17/11
80529	Wheatland Tube Company (Union)	Sharon, PA	10/19/11	10/17/11
80530	The Timken Company (Workers)	Altavista, VA	10/19/11	10/18/11
80531	PPG, Working on-site at General Motors—Shreveport (State/One-Stop).	Shreveport, LA	10/19/11	10/18/11
80532	Advanced Energy (State/One-Stop)	Fort Collins, CO	10/19/11	10/18/11
80533	Champion Photochemical Inc. (Company)	Rochester, NY	10/19/11	10/19/11
80534	UAW Local 2166 (State/One-Stop)	Shreveport, LA	10/20/11	10/19/11
80535	Cooper Bussmann (Company)	Goldsboro, NC	10/20/11	10/19/11
80536	Fortis Plastics (State/One-Stop)	Fort Smith, AR	10/20/11	10/19/11

[FR Doc. 2011–29396 Filed 11–14–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,673]

Weather Shield Manufacturing, Inc. Corporate Office, Medford, WI; Notice of Negative Determination on Remand

On August 3, 2011, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation and to submit a new administrative record in *Former Employees of Weather Shield Manufacturing, Inc.* v. *United States Secretary of Labor* (Court No. 10–00299) that contains information obtained during both the previous investigations and the latest investigation of this matter.

On July 16, 2010, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (subject facility). AR 598. Workers at the subject facility (subject worker group) supply administrative support services related to the production of doors and windows which takes place at various domestic locations of Weather Shield Manufacturing, Inc. (subject firm). The Department's notice of determination was published in the **Federal Register** on August 2, 2010 (75 FR 45163). AR 611.

Background—Petition TA–W–64,725

On December 17, 2008, workers filed a petition for TAA and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (petition TA–W–64,725—hereafter referred to as *Weather Shield I*). AR 1, 4, 6.

The Department determined in the initial and reconsideration investigations in *Weather Shield I* that the subject firm did not shift production to a foreign country and that imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to worker separations at the subject facility. AR 17, 27, 69, 75. A sample survey of the subject firm's declining customers conducted both in the initial and administrative reconsideration investigations revealed negligible imports of products like or directly competitive with those produced by workers at the subject firm. AR 42, 44, 45, 51, 54, 64, 69, 104, 105.

On January 19, 2010, Plaintiffs filed a complaint with the USCIT in which they alleged that their separations were attributable to increased customer imports. In order to conduct a further investigation to address Plaintiff allegations, the Department requested a voluntary remand. During that remand investigation, the Department obtained a list of all the customers of the subject firm (AR 145) and conducted a larger sample customer survey to determine whether or not there were increased customer imports during the relevant time period (calendar years 2007 and 2008) of articles like or directly competitive with doors and/or windows. AR 279–530. The survey revealed that customer imports had increased during the relevant time period. AR 1345.

Accordingly, the Department issued a Revised Determination on Remand on August 9, 2010, applicable to workers at

the subject facility who became totally or partially separated from employment on or after December 17, 2007, through August 9, 2012, which granted certification of eligibility to apply for TAA and ATAA benefits. Under the Department's practice, certifications typically cover workers separated on or after the impact date, as defined in 29 CFR 90.2, and ending at the expiration of the two-year period following the determination. Therefore, the *Weather Shield I* certification covered workers separated in the year preceding the date of the petition and continued for two years after the date of certification. The Department's Notice of Revised Determination on Remand was published in the **Federal Register** on August 23, 2010 (75 FR 51851). AR 1436.

Initial Investigation—Petition TA–W–72,673

On October 23, 2009, workers filed a petition for TAA on behalf of workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (petition TA–W–72,673—hereafter referred to as *Weather Shield II*). AR 534, 539. The petitioners in *Weather Shield II* stated on the petition that worker separations were due to ''the economy'' and that the subject firm operated several domestic facilities and sought certification under the expanded certification requirements for TAA under the TAA program as amended by the Trade and Globalization Act Adjustment Assistance Act of 2009 which provided a higher level of benefits for certified workers.

During the investigation of the *Weather Shield II* petition, the subject firm confirmed that a significant number or proportion of the workers at the subject facility had been totally or partially separated from employment, or threatened with such separation. AR 585, 593. According to the subject firm, the separations were due to the collapse of the domestic housing market and the corresponding decreased demand for windows and doors used in residential units. AR 585, 593, 594.

The investigation also revealed that there was not a shift to or acquisition from a foreign country by the subject firm in the supply of services like or directly competitive with the administrative support services supplied by the subject worker group. AR 585, 593, 594. Therefore, the Department proceeded with a customer survey to determine if the worker separations were attributable to increased imports.

The Department surveyed the subject firm's major declining customers regarding their purchases of doors and/or windows in the relevant period. AR 562–584. The survey revealed that customer imports of articles like or directly competitive with those produced by the subject firm declined in the relevant period, both in absolute terms and relative to the purchases made from the subject firm. AR 587. The Department determined that, for the relevant period of the *Weather Shield II* petition, the separations in the subject worker group were not related to an increase in imports.

The customers selected for the survey were chosen based on the complete customer list obtained in the investigation of *Weather Shield I* and the results of the customer surveys conducted during that investigation. AR 145. Reviewing information already on record enabled the Department to select a representative sample of customers, the data of which was sufficient to reach the initial determination on the petition. Selecting which customers to survey based on the survey results collected in *Weather Shield I* provided more clarity regarding the approximate size of the surveyed customers as the size of each customer was not specified by the subject firm. AR 145, 279–530, 1345.

In addition, data collected on U.S. aggregate imports of articles like or directly competitive with those produced by the subject firm showed a decline between 2008 and 2009. AR 591, 592.

Based on this information, the Department issued a negative determination on July 16, 2010. The Department's Notice of Negative Determination was published in the **Federal Register** on August 2, 2010 (75 FR 45163). AR 611.

Reconsideration Investigation—Petition TA–W–72,673

By application dated August 23, 2010, a petitioner requested administrative reconsideration on the Department's negative determination. AR 612, 620, 627, 635, 642. In the application, the petitioner stated that the factual circumstances in TA–W–72,673 are the same as in petition TA–W–64,725 and that the current petition should therefore also be certified.

Because the petitioner did not supply facts not previously considered, provide documentation to show that the determination was erroneous, or show that there was a misinterpretation of facts or the law, the Department determined that administrative reconsideration could not be granted, in accordance with 29 CFR 90.18(c), and issued a Notice of Negative Determination Regarding Application for Reconsideration for the subject worker group on September 10, 2010. AR 649.

The Department explained that because the petition date of TA–W–64,725 is December 17, 2008 and the petition date of TA–W–72,673 is October 23, 2009, the investigation periods in the two cases are different and that the findings in TA–W–64,725 cannot be used as the basis for certification of TA–W–72,673. The Department's Notice of Negative Determination Regarding Application for Reconsideration was published in the **Federal Register** on September 21, 2010 (75 FR 57519). AR 653.

Remand Investigation—Petition TA–W–72,673

The petitioners then filed a complaint with the USCIT on October 8, 2010, and argued the same allegations as in their request for administrative reconsideration. The Department determined that further investigation under judicial review was not justified, for the same reasons that the application for administrative reconsideration was not granted, and filed an administrative record that consisted of the materials upon which the Department relied in making its determination with regards to the subject worker group's eligibility to apply for TAA.

In Plaintiffs' Motion to Supplement the Administrative Record, dated March 30, 2011, Plaintiffs indicated that the administrative record did not include documentation that adequately supported the negative determination. Specifically, the Plaintiffs pointed to TAA certifications of other door and window manufacturers, and provided lists of the ''Top 100 Window Manufacturers'' and of door and window dealers with which the subject firm competed. In addition, the Plaintiffs indicated that the record was missing material that was collected in the *Weather Shield I* initial and remand investigations and that was considered in the *Weather Shield II* investigation.

On May 2, 2011, the Department filed a Motion for Voluntary Remand in which it sought to supplement the administrative record with material that was received during the investigation of *Weather Shield I* and to provide a thorough explanation as to how it relied on the omitted documents to make its determination.

The Department amended the administrative record on June 3, 2011 to include documents from the *Weather Shield I* initial and remand investigations that supported the

determination in *Weather Shield II.* Namely, the Department added to the record the customer surveys received during the remand investigation; the complete customer list obtained during the remand investigation; the ''Non-Production Questionnaire'' (OMB No. 1205–0447) and ''Confidential Data Request'' forms (OMB No. 1205–0342) received during the initial investigation; email correspondence in which the subject firm provided to the Department sales figures during the remand investigation; and the Department's investigative report from the initial investigation. AR 655, 657, 662, 667, 673, 675. The Department also supplemented the record with an explanation regarding the relevance of these documents. AR 740.

The record shows that while the subject worker group covered by *Weather Shield I* is the same as the subject worker group covered by *Weather Shield II,* the investigations of the subject worker group cover different time periods. In *Weather Shield I,* the petition date is December 18, 2008, making the relevant period calendar year 2008 and the representative base period calendar year 2007. In *Weather Shield II,* the petition date is October 23, 2009, making the relevant period October 2008 through September 2009 and the representative base period October 2007 through September 2008.

This distinction is important in that 29 CFR 90.2 states that ''Increased imports means that *imports have increased either absolutely or relative to domestic production compared to a representative base period.* The representative base period shall be one year consisting of the four quarters immediately preceding the date which is the twelve month prior to the date of the petition.'' (Emphasis added).

The remand investigation of *Weather Shield I* and the initial investigation of *Weather Shield II* were conducted concurrently because the USCIT complaint in *Weather Shield I* was filed on January 19, 2010, approximately two and half months after the petition to the Department for *Weather Shield II* was filed on October 23, 2009. AR 534. AR Therefore, the Department used some of the documents already in its possession that were obtained in the initial and remand investigations of *Weather Shield I* in determining whether the subject worker group covered under the *Weather Shield II* petition met the eligibility criteria for certification. AR 655, 657, 662, 667, 673, 675.

Because of the different relevant time periods for each investigation, the Department considered only information that could not have changed from one set of time periods to the next. For example, in order to determine whether subject firm sales had declined, the Department collected from the subject firm sales data for calendar 2009, which was compared to the 2008 data already on record. Similarly, as explained above, the Department used the complete customer list obtained during the course of the *Weather Shield I* remand investigation to conduct the survey in *Weather Shield II.* The Department's Notice of Amended Negative Determination was published in the **Federal Register** on June 15, 2011 (76 FR 35026). AR 1438.

On July 5, 2011, the Plaintiffs filed a Memorandum of Points and Authorities in Support of Plaintiffs' Amended Motion for Judgment on the Agency Record in which they asked the Department to conduct further investigation and apply the same methodology as in the *Weather Shield I* remand investigation in regards to administering customer surveys and determining import competition.

On August 3, 2011, the Department requested a voluntary remand to complete the administrative record with all the contents of *Weather Shield I,* to reopen the case to conduct further investigation, and to permit the Plaintiffs to submit evidence.

On September 2, 2011, the Plaintiffs submitted additional information in support of their claims. AR 1023, 1114. In their letter, the Plaintiffs reiterated the allegations supplied in the October 8, 2010 USCIT complaint, the March 30, 2011 Motion, and the July 5, 2011 Memorandum and provided information to show an overlap between Weather Shield's customers and those of other domestic firms that allegedly import from foreign countries articles like or directly competitive with doors and/or windows. AR 1023, 1114. The Plaintiffs alleged that the subject firm competed with other U.S. window and door manufacturers, to the workers of which the Department granted TAA certifications, and pointed to possible import competition between the subject firm and its competitors. AR 1023, 1114.

The Plaintiffs stated that the Department should: 1. expand the record to include data from additional customers by conducting more surveys, including surveying all the same customers that were identified in the *Weather Shield I* remand; 2. show that the surveyed customers account for a significant percentage of the subject firm's sales decline; 3. collect additional information from one of the customers that was surveyed in the initial investigation regarding the information reported on the survey in order to determine whether this customer's purchases from other domestic firms were imported or domestic, and establish that the decline in sales to this customer by the subject firm was not attributable to an increase in imports; 4. take into consideration the TAA certifications of alleged competitors Jeld-Wen Premium Doors, Springs Window Fashions, Woodgrain Millworks, and Simpson Door Company and how the activities of these firms could have created import competition for the subject firm; 5. examine the competition that occurs between the ''Top 100 Window Manufacturers'' and look for overlapping customers between Weather Shield and its competitors, especially those that employed TAA certified worker groups. AR 1023, 1114.

The *Weather Shield I* petition was filed under the Trade Adjustment Assistance Reform Act of 2002 requirements for TAA certification whereas the *Weather Shield II* petition was filed under the Trade and Globalization Adjustment Assistance Act of 2009 requirements. Under the 2009 amendments, the group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), can be satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm have decreased absolutely;

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm, have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers' firm has acquired from a foreign country articles or services that are

like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Pursuant to the August 3, 2011 remand, the Department collected additional information from the subject firm and the Plaintiffs, conducted an expanded customer survey, and collected aggregate U.S. import data pertaining to articles like or directly competitive with those produced at the subject firm.

The Department also confirmed previously collected information from the subject firm which revealed updated information regarding the shutdown of production facilities and sales figures during the relevant period. The corrected information revealed that the subject firm production facilities in Park Falls, Wisconsin, Ladysmith, Wisconsin, and Medford, Wisconsin had not shut down production in early 2009, as previously stated by the subject firm in the initial investigation of *Weather Shield I.* AR 779.

Additionally, the new information revealed that sales of the subject firm increased in the relevant time period. AR 812. Nonetheless, the Department conducted a customer survey to determine whether possible declines in production at the subject firm had been caused by an increase in import competition. AR 823–990, 1243–1324, 1325–1344.

The Department surveyed a total of 16 of the subject firm's customers regarding their purchases of doors and/or windows in 2008 and 2009. AR 823–996, 1254–1312, 1326–1341. The survey selection was based on information provided by the subject firm pertaining to its top customers during the relevant time period. AR 145, 785. The survey also included the three customers that were surveyed in the initial investigation of *Weather Shield II.* AR 823, 1243, 1313–1324, 1325, 1342, 1343.

The data collected from the 19 surveyed customers demonstrated that imports declined at a much faster rate than purchases made from the subject firm and other domestic firms between 2009 and the representative base period. AR 1344. Although purchases from the subject firm by these customers declined, because overall subject firm sales increased in the relevant time period, these customers did not account for any sales declines at the subject firm. AR 1344.

The Department collected U.S. aggregate import data of *wood window and door manufacturing* (NAICS 321911) and *metal window and door manufacturing* (NAICS 332321) which showed an overall decrease in imports. The first group of data for wood window and door manufacturing shows a decline of 36 percent from 2008 to 2009 (imports only) and 10 percent (imports to shipments) in the relevant time period. The second group of data for metal window and door manufacturing shows a decline of 34 percent (imports only) and nine percent (imports to shipments) in the relevant time period. AR 1346.

The Plaintiffs also asked the Department to determine whether the subject firm may have competed with imported doors and/or windows of other domestic suppliers of a specific customer of the subject firm that was surveyed in the initial investigation. AR 1023, 1114. The Department solicited information from this customer regarding the origin of the products it purchases from other domestic firms. AR 823–852, 997. The customer explained that it does not track import information on products purchased from domestic suppliers. AR 823–852. The Department conducted further investigation regarding the domestic suppliers of this customer to determine if any of the suppliers employed workers that had been certified eligible for TAA benefits in the relevant time period. AR 998. The investigation revealed that this customer had one supplier that sold products like or directly competitive with those produced by the subject firm whose workers had been certified eligible for TAA. AR 998.

The Department also conducted a search to reveal how many of the firms on the ''Top 100 Window Manufacturers'' list provided by the Plaintiffs employed worker groups that were certified for TAA in the relevant time period. AR 1354. The search revealed that only six firms (nine locations total) employed worker groups that had been certified eligible to apply for TAA. AR 1354. Out of the nine locations, the workers of two locations received TAA certifications due to increased imports during the relevant time period (Jeld-Wen Premium Doors, Oshwosh, WI, TA–W–71,644; certified for TAA on July 21, 2009 and Woodgrain Millworks, Inc., Nampa, ID, TA–W–63,263; certified for TAA on May 9, 2009). AR 1354. Two certifications were granted based on shifts in production abroad, three for increased imports that took place prior to the relevant time period of this investigation, one for imports of an article not like or directly competitive with the articles produced at the subject firm, and one on secondary basis. AR 1354.

For each of the two cases above that received a TAA certification, Jeld-Wen Premium Doors and Woodgrain Millworks, Inc., the Department compared the customer lists provided by each of these firms to that provided by the subject firm. The comparison revealed that these alleged competitors and the subject firm do not have any customers in common. AR 1363–1431. Therefore, the Department could not verify the Plaintiffs' claim that the subject firm and the alleged competitors directly competed in the same markets and had no basis for finding that these firms competed in the same market area.

Additionally, the Department contacted an alleged competitor of the subject firm, Simpson Door Company, to confirm the Plaintiffs' claims that this firm shut down domestic operations due to increased import competition. AR 1431A. According to the information provided, this firm has not ceased domestic production of doors and/or windows. AR 1431A. The Department also collected information regarding this firm's major domestic customers. AR 1431A. After comparing the customer list to that provided by the subject firm, it was revealed that the two firms only have one customer in common where articles from the two firms competed directly. AR 1431A. Therefore, the Plaintiffs' claim that the subject firm competed with Simpson Door Company's imported products during the relevant time period is not justified.

Additionally, the investigation revealed that although workers at Springs Window Fashions, LLC, Montgomery, PA (TA–W–62,704) were certified for TAA in the relevant time period, this firm does not produce articles like or directly competitive with those produced at the subject firm so it could not have posed competition. AR 1350.

Based on a careful review of previously submitted information and new information obtained during the remand investigation, the Department finds that worker separations at the subject firm were not caused by an increased reliance on imports of articles like or directly competitive with those produced by the subject firm. Therefore, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(c) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for

workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin.

Signed in Washington, DC, on this 31st day of October, 2011

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–29397 Filed 11–14–11; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Presidential Library-Foundation Partnerships. The meeting will be held to discuss the National Archives and Records Administration budget for Presidential Libraries, program activities at the Presidential Libraries, and the status of the Agency's reorganization and transformation.

DATES: The meeting will be held on December 2, 2011 from 9 a.m. to 12 noon.

ADDRESSES: The Ronald Reagan Presidential Library and Museum, 40 Presidential Drive, Simi Valley, CA 93065.

FOR FURTHER INFORMATION CONTACT: Susan Donius, Acting Director, Office of Presidential Libraries, at the National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740, telephone number (301) 837–3250. Contact the Presidential Libraries staff at *denise.lebeck@nara.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Parking is available.

Dated: November 8, 2011.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2011–29480 Filed 11–14–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts; Submission of OMB Review: Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. Chapter 35]. Copies of the ICR, with applicable supporting documentation, may be obtained by contacting Sunil Iyengar via telephone at (202) 682–5654 (this is not a toll-free number) or email at *research@arts.endow.gov.* Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: National Endowment for the Arts.

Title: General Social Survey Arts Supplement.

OMB Number: New.

Frequency: Biennial.

Affected Public: American adults.

Estimated Number of Respondents: 2,830.

Estimated Time per Respondent: 3.5 minutes.

Total Burden Hours: 165 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

This request is for clearance of an arts supplement for the 2012 General Social Survey (GSS), to be conducted by the National Opinion Research Center. The supplement will include questions about self-reported motivations and barriers associated with attending selected art activities. The results will help to address an existing research gap of why Americans choose to attend—or not attend—activities such as visual arts exhibits or music, dance, or theater performances. These data will supplement the data collected by the Survey of Public Participation in the Arts, which was not designed to collect this information. The GSS is one of the most cited and recognized sources of information in the social sciences. The data will be publicly available and the basis for a range of NEA reports and independent research publications.

Addresses: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5654 (this is not a toll-free number), fax (202) 682–5677.

Dated: November 9, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–29415 Filed 11–14–11; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this

matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 1, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the September 27, 2011 deadline.

2. *Date:* December 1, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for U.S. History & Culture V in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

3. *Date:* December 2, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the September 27, 2011 deadline.

4. *Date:* December 5, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the September 27, 2011 deadline.

5. *Date:* December 6, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 415.
Program: This meeting will review applications for U.S. History & Culture VI in Preservation and Access Humanities Collections and Reference Resources, submitted to the Division of Preservation and Access at the July 20, 2011 deadline.

6. *Date:* December 7, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the September 27, 2011 deadline.

7. *Date:* December 8, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the September 27, 2011 deadline.

8. *Date:* December 12, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities at the September 27, 2011 deadline.

9. *Date:* December 14, 2011.
Time: 8:30 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the August 17, 2011 deadline.

Lisette Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2011–29370 Filed 11–14–11; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–7580; NRC–2011–0260]

Notice of Application From FMRI for Consent to an Indirect Change of Control for Source Material License SMB–911 to Green Lantern Acquisition 1, LLC

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of receipt of an application for indirect change of control and opportunity to request a hearing and provide written comments.

DATES: Requests for a hearing must be filed by January 17, 2012. Submit comments by January 17, 2012.

ADDRESSES: Please include Docket ID NRC–2011–0260 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0260. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are

problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The Application for Consent to Indirect Change of Control for Source Material License SMB–911 is available electronically under ADAMS Accession Number ML11174A044.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0260.

FOR FURTHER INFORMATION CONTACT: James C. Shepherd, Project Engineer, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6712; email: *james.shepherd@nrc.gov.*

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application dated July 21, 2011, by FMRI (the ''Applicant''), requesting consent for an indirect change of control with respect to its NRC Materials License SMB–911. Under this license, the Applicant owns a former rare earth processing facility located in Muskogee, Oklahoma. FMRI is currently a wholly-owned subsidiary of Fansteel, Inc. Consummation of the proposed transaction would result in the indirect change of control of FMRI from Fansteel, Inc. to Green Lantern Acquisition 1, LLC (''GLA 1''). The Applicant is requesting that the NRC consent to this indirect change of control.

The application states that there would be no change to FMRI's operations, its key operating personnel, or its licensed activities as a result of the transaction. After closing of the transaction, and if the indirect change of control is approved by the NRC, FMRI would continue to be the holder of license SMB–911. The Applicant would remain technically and financially qualified as the licensee and would continue to fulfill all responsibilities as the licensee. An administrative license amendment would be necessary to reflect a change in the financial surety mechanism for license SMB–911.

Pursuant to section 184 of the Atomic Energy Act of 1954, as amended (AEA) and Title 10 of the *Code of Federal Regulations* (10 CFR), section 40.46, no part 40 license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the AEA, and gives its consent in writing. An Environmental Assessment (EA) will not be performed for this proposed action because it is categorically excluded from the requirement to perform an EA under 10 CFR 51.22(c)(21).

Consent to the indirect change of control is contingent upon receipt of the fully executed financial assurance instruments that meet NRC requirements and are accepted by NRC, and a satisfactory completion of a safety review. If the NRC staff determines to approve the application, it will do so by issuing the necessary order, along with a supporting safety evaluation report. The Applicant may be required to obtain regulatory approvals by other Federal and State agencies or departments, independent of NRC review and approval.

An NRC administrative review, documented in a letter to FMRI dated July 21, 2011 (ML112000025), found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License SMB–911. However, before approving the proposed amendment, the NRC will need to make the findings required by the AEA and NRC's regulations. These findings will be documented in a Safety Evaluation Report.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

III. Opportunity To Provide Written Comments

In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings, persons may submit written comments regarding this action. Written comments must be submitted no later than January 17, 2012. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's

public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 27th day of October, 2011.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–29434 Filed 11–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0254]

Common-Cause Failure Analysis in Event and Condition Assessment: Guidance and Research, Draft Report for Comment; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on November 2, 2011 (76 FR 67764). This action is necessary to correct an erroneous date for submission of comments.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3667; email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 67765, in the first column, in the **DATES:** section, the date is changed from ''January 31, 2011,'' to read ''January 31, 2012.''

Dated at Rockville, Maryland, this 8th day of November 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Liaison Officer.

[FR Doc. 2011–29436 Filed 11–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0261]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC)

is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 20, 2011 to November 2, 2011. The last biweekly notice was published on November 1, 2011 (76 FR 67485).

ADDRESSES: Please include Docket ID NRC–2011–0261 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0261. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1 (800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0261.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to

continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1-(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: July 5, 2011, as supplemented by letter dated September 12, 2011.

Description of amendment request: The proposed amendment would modify the Millstone Power Station, Unit 3 (MPS3), Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program (SFCP). The proposed changes are based on the Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF)-425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b'' (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML090850642). Plant-specific deviations from TSTF–425 are proposed to accommodate differences between the MPS3 TSs and the model TSs originally used to develop TSTF–425. The proposed plant-specific deviations involve fixed periodic frequency surveillances, and are therefore consistent with TSTF–425, and editorial deviations.

The NRC staff issued a Notice of Availability for TSTF–425 in the **Federal Register** on July 6, 2009 (74 FR 31996). The notice included a model safety evaluation and a model no significant hazards consideration (NSHC) determination. In its application dated July 5, 2011, as supplemented by letter dated September 12, 2011, Dominion Nuclear Connecticut, Inc. (DNC or the licensee) provided its analysis of the issue of NSHC based on the model NSHC determination for TSTF–425.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the TSs for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed changes. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Dominion will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI [Nuclear Energy Institute] 04–10, Rev. 1, [''Risk-Informed Technical Specifications Initiative 5b Risk-Informed Method for Control of Surveillance Frequencies,''] in accordance with the TS SFCP [Surveillance Frequency Control Program]. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177 [''An

Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications''].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Harold K. Chernoff.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 22, 2011.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) by relocating specific Surveillance Frequencies to a licensee-controlled program with the adoption of Technical Specification Task Force (TSTF)-425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control-Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b.''

The existing Bases information describing the basis for the Surveillance Frequency will be relocated to the licensee-controlled Surveillance Frequency Control Program. Additionally, the change would add a new program, TS 5.5.15, ''Surveillance Frequency Control Program,'' to TS Section 5.5, ''Programs and Manuals.''

The changes are consistent with NRC approved TSTF–425, Revision 3, (Rev. 3) (ADAMS Package Accession No. ML090850642). The **Federal Register** notice published on July 6, 2009 (74 FR 31996), announced the availability of this TS improvement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Entergy will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP [Surveillance Frequency Control Program]. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Renewed Facility Operating License No. DPR–059

Date of amendment request: August 16, 2011.

Description of amendment request: The proposed amendment to the Renewed Facility Operating License would revise the James A. FitzPatrick Nuclear Power Plant (JAF) current licensing basis (CLB) to allow the use of On Load Tap Changers (OLTCs) with new Reserve Station Service Transformers (RSST) that provide offsite power to JAF.

The OLTCs are sub-components of two new RSSTs that will be installed at JAF in September 2012, during the scheduled refueling outage. The OLTCs are designed to compensate for offsite voltage variations and will provide added assurance that acceptable bus voltage is maintained for safety-related equipment.

The proposed amendment requests NRC approval to operate the OLTCs in the automatic mode. Operation of the OLTCs in the automatic mode was evaluated under 10 CFR 50.59 and it was determined that it requires NRC approval because such operation creates the possibility for a malfunction of a structure, system, or component important to safety with a different result than any previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed amendment would change the UFSAR and the Technical Specification (TS) Bases. There would be no changes to the plant TS associated with this request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment will allow operation of the OLTCs in automatic mode. The only accident previously evaluated where the probability of an accident is potentially affected by the change is the loss

of offsite power (LOOP) Abnormal Operational Transient (AOT). Failure of an OLTCs while in the automatic mode of operation that results in decreased voltage to the engineered safety features (ESF) buses could cause a LOOP if voltage decreased below the degraded voltage relay (DVR) setpoint. The two postulated failure scenarios are: (1) Failure of an [a] primary microcontroller that results in rapidly decreasing voltage supplied to the ESF buses and; (2) failure of an [a] primary microcontroller to respond to decreasing grid voltage. For the first scenario, a backup microcontroller is provided for each OLTC, which makes this failure unlikely. For the second scenario, since grid voltage changes typically occur relatively slowly and the magnitude of the resulting change would be limited to the effect of the change in grid voltage, operators would have ample time to address the condition utilizing identified procedures. In addition, the frequency of occurrence of these failure modes is small, based on the operating history of similar equipment at other plants. Furthermore, in both of the above potential failure modes, operators can take manual control of the OLTC to mitigate the effects of the failure. Thus, the probability of a LOOP will not be significantly increased by operation of the OLTCs in the automatic mode.

The proposed amendment has no effect on the consequences of a LOOP, since the emergency diesel generators (EDGs) provide power to safety-related equipment following a LOOP. The design and function of the EDGs are not affected by the proposed change. The probability of other previously evaluated accidents is not affected, since the proposed amendment does not affect the way plant equipment is operated and thus does not contribute to the initiation of any of the previously evaluated accidents. The OLTC is equipped with a backup microcontroller, which inhibits gross improper action of the OLTC in the event of primary microcontroller failure. Additionally, the operator has procedurally identified actions available to prevent a sustained high voltage condition from occurring. Damage due to overvoltage is time-dependent, requiring a sustained high voltage condition. Therefore, damage to safety-related equipment is unlikely, and the consequences of previously evaluated accidents are not significantly increased. Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment involves electrical transformers that provide offsite power to safety-related equipment for accident mitigation. The proposed change does not alter the design, physical configuration, or mode of operation of any other plant structure, system, or component. No physical changes are being made to any other portion of the plant, so no new accident causal mechanisms are being introduced. Although the proposed change potentially affects the consequences of previously evaluated accidents (as discussed in the response to Question 1), it does not result in any new mechanisms that could initiate damage to the reactor or its principal safety barriers (*i.e.,* fuel cladding, reactor coolant system, or primary containment).

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect the inputs or assumptions of any of the analyses that demonstrate the integrity of the fuel cladding, reactor coolant system, or containment during accident conditions. The allowable values for the degraded voltage protection function are unchanged and will continue to ensure that the degraded voltage protection function actuates when required, but does not actuate prematurely to unnecessarily transfer safety-related loads from offsite power to the emergency diesel generators. Automatic operation of the OLTCs increases the margin of safety by reducing the potential for transferring loads to the EDGs during an under voltage or over voltage event on the offsite power sources.

Therefore, the proposed amendment to the JAF design basis does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: August 16, 2011, as supplemented by letter dated October 6, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 5.5.14, ''Containment Leak Rate Testing Program'' to increase the value of the calculated peak containment internal pressure from 53 pounds per square inch gauge (psig) to 54.2 psig. This increase is due to an increase in the calculated mass and energy release during the blowdown phase of the design basis loss-of-coolant accident (LOCA). The increase in the predicted mass and energy release is due to the correction of an error in the calculation of the current value of P_a. The regulations at 10 CFR part 50 Appendix J Option B define P_a as the calculated peak containment internal pressure related to the design basis LOCA as specified in the TS and specifies the requirements for containment leakage rate testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to P_a does not alter the assumed initiators to any analyzed event. The probability of an accident previously evaluated will not be increased by this proposed change.

The change in P_a will not affect radiological dose consequence analyses. PNP radiological dose consequence analyses assume a certain containment atmosphere leak rate based on the maximum allowable containment leakage rate, which is not affected by the change in calculated peak containment internal pressure. The Appendix J containment leak rate testing program will continue to ensure that containment leakage remains within the leakage assumed in the offsite dose consequence analyses. The consequences of an accident previously evaluated will not be increased by this proposed change.

Therefore, operation of the facility in accordance with the proposed change to P_a will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change provides a higher P_a than currently described in the TS. This change is a result of an increase in the mass and energy release input for the loss of coolant accident containment response analysis. The calculated peak containment pressure remains below the containment design pressure of 55 psig. This change does not involve any alteration in the plant configuration (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed change to TS Section 5.5.14 would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The calculated peak containment pressure remains below the containment design pressure of 55 psig. Since PNP radiological consequence analyses are based on the maximum allowable containment leakage rate, which is not being revised, the change in the calculated peak containment pressure does not represent a significant change in the margin of safety.

Therefore, operation of the facility in accordance with the proposed change to TS Section 5.5.14 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: May 31, 2011.

Description of amendment request: The proposed amendment would upgrade selected DAEC Emergency Action Levels (EALs) based on NEI 99–01, Revision 5, ''Methodology for Development of Emergency Action Levels,'' using the guidance of NRC Regulatory Issue Summary 2003–18, Supplement 2, ''Use of Nuclear Energy Institute (NEI) 99–01, Methodology for Development of Emergency Action Levels.'' NextEra Energy Duane Arnold currently uses an emergency classification scheme based on NEI 99–01, Revision 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

These changes affect the DAEC Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not modify any plant equipment and do not impact any failure modes that could lead to an accident. Additionally, the proposed changes do not impact the consequence of any analyzed accident since the changes do not affect any equipment related to accident mitigation.

Based on this discussion, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

These changes affect the DAEC Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. They do not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions. No system setpoints are being modified and no changes are being made to the method in which plant operations are conducted. No new failure modes are introduced by the proposed changes. The proposed amendment does not introduce accident initiator or malfunctions that would cause a new or different kind of accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

These changes affect the DAEC Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety.

Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the bases for technical specifications covered in this license amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Marjan Mashhadi, 801 Pennsylvania Avenue NW., Suite 220, Washington, DC 20004.

NRC Branch Chief: Robert J. Pascarelli.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit 1, Fairfield County, South Carolina

Date of amendment request: August 23, 2011.

Description of amendment request: The proposed amendment would delete the license condition, 2.G.1 of the Facility Operating License, that requires reporting of violations of Section 2.C of the Facility Operating License consistent with the **Federal Register** notice dated November 4, 2005 (70 FR 67202) as part of the consolidated line item improvement process (CLIIP). The proposed amendment would also delete a reporting requirement in the VCSNS Technical Specifications (TS), Section 6.6, which is duplicative of NRC regulations, and make appropriate adjustments to the TS index to reflect that deletion.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has referenced the NRC staffs model no significant hazards consideration, presented in a **Federal Register** notice (70 FR 51098; August 29, 2005), and made available for use by **Federal Register** notice (70 FR 67202; November 4, 2005), and is presented below:

1. Does the [proposed] change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff proposes that the change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Gloria Kulesa.

Tennessee Valley Authority (TVA), Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: August 31, 2011 (TS–SQN–2011–03).

Description of amendment request: During Sequoyah Nuclear Plant (SQN), Unit 2, spring 2011 refueling outage (RFO), two penetrations through the shield building (SB) dome were created. To maintain SB integrity, these penetrations were closed with a steel hatch assembly prior to entering Mode 4 at the end of the RFO. The proposed amendment would temporarily revise the technical specifications to allow opening of one of the penetration hatches in the SB dome for up to 5 hours per day, 6 days per calendar week while in Modes 1 through 4 during SQN, Unit 2 Cycle 18, and until entering Mode 5 at the start of the SQN, Unit 2 fall 2012 RFO. The two approximately 18-inch diameter penetrations on the SB dome will provide steam generator replacement project workers an alternate path of moving materials inside the annulus for online work. Without use of the SB dome penetration hatches, materials would travel through the auxiliary building (AB), to the annulus access door, and be hoisted up the annual access ladders. Bypassing the AB and the annulus access ladders reduces the risk of potential adverse effects to sensitive equipment along the path. The alternate path is estimated to save approximately 2.8 roentgen equivalent man by allowing materials to be passed through the open SB dome penetration hatch in lieu of carrying the material past higher dose areas. In addition, passing material through the open SB dome hatch will significantly improve the industrial safety aspect of the work and will provide work efficiency gains since material will be provided closer to the point of use.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The bounding transients and accidents (*i.e.,* loss-of-coolant-accident (LOCA), tornado, and earthquake) that are potentially affected by the assumptions associated with the use of one of the Shield Building dome penetration hatches (2–EQH–410–0010 or 2–EQH–410–0011) have been evaluated/analyzed. Weather and seismic related events are determined by regional conditions. Therefore, the probability of a tornado or earthquake is not affected by the use of one of the Shield Building dome penetration hatches. Failure of the Shield Building or Emergency Gas Treatment System (EGTS) is not an initiator of any of the accidents and transients described in the Updated Final Safety Analysis Report (UFSAR). Therefore, since no initiating event mechanisms are being changed, the use of one of the Shield Building dome penetration hatches will not result in an increase in probability of any previously evaluated accident.

The use of one of the Shield Building dome penetration hatches affects the integrity of the Shield Building and the ability of the EGTS to maintain the annulus at a negative pressure relative to the outside atmosphere such that the function in mitigating the radiological consequences of an accident is affected. TVA's evaluation documents the radiological consequences of a LOCA assuming the open Shield Building dome penetration hatch is closed within 22.1 minutes and the operating EGTS trains draw down the annulus to −0.25 inches wg [water gauge] to effectively end the direct release of radionuclides to the environment 23.1 minutes after accident initiation. TVA's evaluation also documents the mission dose an individual may receive during ingress from the Control Building Habitability area to the Shield Building dome, closure of the steel hatch assembly, and egress from the Shield Building dome. Although the LOCA radiological consequences with the Shield Building dome penetration hatch open for 22.1 minutes (and assumed to be a direct release path for 23.1 minutes) are higher than those described in the UFSAR, the offsite and Control Room doses remain within the limits of 10 CFR 50.67, ''Accident source term,'' when applying the Alternate Source Term (AST) methodology in accordance with Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' dated July 2000. The calculated mission doses are also less than the limits of 10 CFR 50.67, ''Accident source term,'' paragraph (b)(2)(iii) when applying the AST methodology in accordance with Regulatory Guide 1.183.

Therefore, since the increase in radiological consequences of the previously evaluated LOCA remains bounded by the applicable regulatory limits, the increased consequences are not considered significant.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Loss of Shield Building integrity or EGTS failure is not an initiator of any of the accidents and transients described in the UFSAR. Shield Building integrity as the pressure boundary for the EGTS, and loss of Shield Building integrity due to an open penetration hatch in the Shield Building dome (Hatch 2–EQH–410–0010 or 2–EQH–410–0011) during Modes 1 through 4 potentially renders both trains of EGTS incapable of establishing a post-accident annulus pressure. This condition would require SQN, Unit 2, to enter the Action of TS [Technical Specification] Limiting Condition for Operation (LCO) 3.6.1.8 (for the condition of one train of EGTS being inoperable) and enter TS LCO 3.0.3 (due to both trains of EGTS being inoperable). TS LCO 3.0.3 requires that the unit be shutdown within specified time periods. Closure of the open Shield Building dome penetration steel hatch assembly restores the integrity of the Shield Building such that both trains of EGTS would be operable as required by TS LCO 3.6.1.8. Failure of the Shield Building dome penetration steel hatch assemblies will not initiate any of the accidents and transients described in the UFSAR. Postulated failures of the Shield Building dome penetration steel hatch assemblies are degradation/damage to the seals or damage to the hatch hinges. Like any other Shield Building failure during Modes 1 through 4 that potentially renders both trains of EGTS inoperable, these postulated Shield Building dome penetration steel hatch assembly failures result in a loss of Shield Building integrity and require that the failed component be repaired or replaced within a specified time period or that plant shutdown be initiated.

Therefore, a failure of a steel hatch assembly during use of the Shield Building dome penetration will not initiate an accident nor create any new failure mechanisms. The changes do not result in any event previously deemed incredible being made credible. The use of Shield Building dome Penetration Hatch 2–EQH–410–0010 or 2–EQH–410–0011 is not expected to result in more adverse conditions in the annulus and is not expected to result in any increase in the challenges to safety systems.

Manual action is required to close an open Shield Building dome penetration hatch and to configure the EGTS control loops following the opening and closing of a Shield Building dome penetration hatch such that the EGTS will respond as designed. NRC Information Notice (IN) 97–78, ''Crediting of Operator Actions in Place of Automatic Actions and Modifications of Operator Actions, Including Response Times,'' and American National Standards Institute/American Nuclear Society (ANSI/ANS)–58.8, ''Time Response Design Criteria for Safety-Related Operator Actions,'' provide guidance for consideration of safety-related operator actions.

The manual actions implemented as a result of this change can be completed within the guidance and criteria provided in Information Notice (IN) 97–78 and ANSI/ANS–58.8. Consequently, the manual actions can be credited in the mitigation of events that require Shield Building integrity. With credit for the manual actions to close an open Shield Building dome penetration hatch (2–EQH–410–0010 or 2–EQH–410–0011) and reconfigure the EGTS control loops subsequent to an event, the types of accidents currently evaluated in the UFSAR remain the same.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The manual actions to close an open Shield Building dome penetration hatch (2–EQH–410–0010 or 2–EQH–410–0011) and to configure the EGTS control loops following the opening and closing of a Shield Building dome penetration hatch ensure that the EGTS will respond as designed. Safety-related instrumentation is available to inform operators that a reactor trip has occurred, and dedicated trained individuals will be positioned to close an open Shield Building dome penetration hatch should an accident occur. The manual actions meet the criteria for safety-related operator actions contained in NRC IN 97–78 and ANSI/ANS–58.8. The use of manual actions maintains the margin of safety by assuring compliance with acceptance limits reviewed and approved by the NRC. The appropriate acceptance criteria for the various analyses and evaluations have been met; therefore, there has not been a reduction in any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov*.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412 Beaver Valley Power Station, Unit 1 and 2, Beaver County, Pennsylvania

Date of application for amendment: April 29, 2011.

Brief description of amendment: The amendments will modify Technical Specification (TS) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status and establish alternative methods of monitoring RCS leakage when one or more require monitors are inoperable. The changes are consistent with Nuclear Regulatory Commission-approved Technical Specification Task Force Traveler-513, Revision 3. The availability of this TS improvement was published in the **Federal Register** on January 3, 2011 (76 FR 189), as part of the consolidated line item improvement process.

Date of issuance: October 25, 2011.

Effective date: As of the date of issuance, and shall be implemented within 90 days from the. date of issuance.

Amendment Nos: 288 and 175.

Renewed Facility Operating License Nos. DPR–66 and NPF–73: The amendments revised the License and TS.

Date of initial notice in ***Federal Register:*** July 12, 2011 (76 FR 40940).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2011.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: August 5, 2010, supplemented by letters dated February 22, May 20, September 14, and September 22, 2011.

Brief description of amendments: The amendments revise Technical Specification (TS) 5.5.1 Fuel Storage—Criticality, to include new spent fuel storage patterns that account for both the increase in fuel maximum enrichment from 4.5 weight (wt) percent (%) U–235 to 5.0 wt% U–235 and the impact on the fuel of higher power operation proposed under the Extended Power Uprate license amendment request. Although the fuel storage has been analyzed at the higher fuel enrichment in the new criticality analysis, the fuel enrichment limit of 4.5 wt% U–235 specified in TS 5.5.1 will not be changed with the issuance of these license amendments.

Date of issuance: October 31, 2011.

Effective date: As of the date of issuance and shall be implemented by the completion of the Cycle 26 refueling outage for Unit 3 and Cycle 27 refueling outage for Unit 4.

Amendment Nos.: Unit 3—246 and Unit 4—242.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 5, 2010 (75 FR 61527). The supplements dated February 22, May 20, September 14, and September 22, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 2011.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 29, 2010, as supplemented by letters dated June 10 and August 31, 2011.

Brief description of amendment: The amendment revised the acceptance criteria in CNS Technical Specification (TS) 3.8.4, ''DC [Direct Current] Sources—Operating,'' Surveillance Requirement (SR) 3.8.4.1, and TS 3.8.6, ''Battery Cell Parameters,'' Table 3.8.6–1, ''Battery Cell Parameter Requirements.'' Specifically, amendment revised the acceptance criteria in TS SR 3.8.4.1 and TS Table 3.8.6–1 by revising the battery terminal voltage on float charge and specific gravity acceptance criteria to ensure that the safety-related batteries can perform their safety functions and will remain operable during postulated design basis events.

Date of issuance: October 28, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 239.

Renewed Facility Operating License No. DPR–46: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 25, 2011 (76 FR 4386). The supplemental letters dated June 10 and August 31, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 2011.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York

Date of application for amendment: November 2, 2010, as supplemented on January 27, 2011.

Brief description of amendment: The amendment revises the NMP1 Technical Specification (TS) Section 3.6.2, ''Protective Instrumentation,'' by modifying the operability requirements for the average power range monitoring (APRM) instrumentation system. The amendment eliminates the requirements that the APRM ''Upscale'' and ''Inoperative'' scram and control rod withdrawal block functions be operable when the reactor mode switch is in the Refuel position. The amendment also clarifies the operability requirements for the APRM ''Downscale'' control rod withdrawal block function when the reactor mode switch is in the Startup and Refuel positions.

Date of issuance: October 31, 2011.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 211.

Renewed Facility Operating License No. DPR–63: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register:*** March 22, 2011 (76 FR 16007). The supplemental letter dated January 27, 2011, provided additional information that clarified the application and did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2011.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of application for amendment: March 30, 2010, as supplemented on June 1 and December 29, 2010, and January 14, February 25, April 27, and July 25, 2011.

Brief description of amendment: The amendment changes the NMP2 Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' to extend the Completion Time (CT) for an inoperable Division 1 or Division 2 diesel generator (DG) from 72 hours to 14 days.

Date of issuance: October 31, 2011.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 138.

Renewed Facility Operating License No. NPF–069: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register:*** July 13, 2010 (75 FR 39980). The supplemental letters dated June 1 and December 29, 2010, and January 14, February 25, April 27, and July 25, 2011, provided additional information that clarified the application and did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2011.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: December 22, 2009, as supplemented by letters dated July 23, 2010, August 20, 2010, October 8, 2010, January 14, 2011, February 23, 2011, April 6, 2011, and August 9, 2011.

Brief description of amendments: The amendments approve the application of the leak-before-break methodology to certain piping systems attached to the reactor coolant system at the Prairie Island Nuclear Generating Plant, Units 1 and 2.

Date of issuance: October 27, 2011.

Effective date: As of the date of issuance. The amendment for Unit 1 shall be implemented within 180 days. The amendment for Unit 2 shall be implemented before the end of the next scheduled Unit 2 refueling outage.

Amendment Nos.: 204, 191.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** May 11, 2010 (75 FR 26290). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 2011.

No significant hazards consideration comments received: No.

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

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–29435 Filed 11–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 1–3, 2011, 11545 Rockville Pike, Rockville, Maryland.

Thursday, December 1, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Levy County, Units 1 and 2, Combined License (COL) Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Progress Energy Florida regarding the subsequent COL application for Levy County, Units 1 and 2, and the NRC staff's associated safety evaluation report. [**Note:** A portion of this session may be closed in order to protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).]

10:45 a.m.–12:45 p.m.: Revised Branch Technical Position Regarding Concentration Averaging and Encapsulation of Low-Level Radioactive Waste (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Revised Branch Technical Position on Concentration Averaging and Encapsulation of Low-Level Radioactive Waste.

1:45 p.m.–3:45 p.m.: Proposed Requirements of Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) and the associated Regulatory Guide (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed requirements for maintenance of ITAAC and the associated Regulatory Guide.

4 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also consider a proposed response to the October 28, 2011, EDO letter regarding the GE Hitachi Nuclear Energy Licensing Topical Report NEPC–33173P–A, Supplement 2, Parts 1, 2, and 3, ''Analysis of Gamma Scan Data and Removal of Safety Limit Minimum Critical Power Ratio (SLMCP) Margin.'' [**Note:** A portion of this session may be closed in order to protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).]

Friday, December 2, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:30 a.m.–10 a.m. Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Draft Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will hold a discussion on the draft report on the biennial ACRS review of the NRC Safety Research Program.

12:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).]

Saturday, December 3, 2011 Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).]

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Mr. Antonio Dias, Cognizant ACRS Staff (Telephone: (301) 415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–(800) 397–4209, or from the Publicly Available Records System (PARS) component of NRC's document

system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301) 415–8066, between 7:30 a.m. and 3:45 p.m. (E.T.), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

If attending this meeting please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240) 888–9835 to be escorted to the meeting room.

Dated: November 8, 2011.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2011–29419 Filed 11–14–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY: *Agency Holding the Meetings:* Nuclear Regulatory Commission.

DATES: Weeks of November 14, 21, 28, December 5, 12, 19, 2011.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Week of November 14, 2011

There are no meetings scheduled for the week of November 14, 2011.

Week of November 21, 2011—Tentative

There are no meetings scheduled for the week of November 21, 2011.

Week of November 28, 2011—Tentative

Tuesday, November 29, 2011

9:30 a.m.—Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting), (Contact: Tanny Santos, (301) 415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 1, 2011

9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting), (Contact: Barbara Williams, (301) 415–7388).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*

Week of December 5, 2011—Tentative

There are no meetings scheduled for the week of December 5, 2011.

Week of December 12, 2011—Tentative

Tuesday, December 13, 2011

9 a.m.—Briefing on NFPA 805 Fire Protection (Public Meeting), (Contact: Alex Klein, (301) 415–2822).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of December 19, 2011—Tentative

There are no meetings scheduled for the week of December 19, 2011.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/public-involve/public-meetings/schedule.html.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969, or send an email to *darlene.wright@nrc.gov.*

Dated: November 9, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–29558 Filed 11–10–11; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology

Notice of Meeting: Open Regional Meeting of the President's Council of Advisors on Science and Technology, Working Group on Advanced Manufacturing.

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for an open regional meeting of the President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing, and describes the functions of the Council and its Working Group.

DATES: December 12, 2011.

ADDRESSES: The meeting will be held at the University of Michigan North Campus Research Complex, 2800 Plymouth Road, Building 18, Ann Arbor, MI 48109–2800.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing will hold a regional meeting at the University of Michigan North Research Complex from 8:30 a.m. to 2:45 p.m. on December 12, 2011.

Advanced manufacturing will provide the basis for high-quality jobs for Americans and sustain U.S. competitiveness in the 21st century. To ensure that the United States attracts manufacturing activity and remains a leader in knowledge production, PCAST recommended in its June 2011 ''Report to the President on Ensuring American Leadership in Advanced Manufacturing'' that the Federal Government create a fertile environment for innovation and make investments to ensure that new technologies and design methodologies are developed in the United States, and that technology-based enterprises have the infrastructure to flourish here.

On the basis of that report, President Obama established PCAST's Advanced Manufacturing Partnership (AMP) Steering Committee to provide additional advice to the government on how to catalyze investment in and deployment of emerging technologies

with the potential to transform U.S. manufacturing. In addition, the AMP Steering Committee is to identify the collaborative approaches needed to realize these opportunities. During this regional meeting, members of the public will have an opportunity to provide their thoughts on:

- Technology development;
- Education and workforce development;
- Facility and infrastructure sharing;
- Policies that could create a fertile innovation environment.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available at *http://advancedmanufacturing.umich.edu/.* For questions regarding the facility and location-focused questions, please send an email to *amp-registrar@umich.edu.*

Please note that public seating for this meeting is limited and is available on a first-come, first-served basis. Additional regional meetings are scheduled in Cambridge, Massachusetts (November 28), and Berkeley, California (December 5).

More information about AMP is available at: *http://whitehouse.gov/ostp/pcast/amp* and *http://www.eere.energy.gov/amp.* Questions about AMP should be directed to *amp@ostp.gov*. For those who would like to get involved in AMP, but are unable to attend the regional meetings, you may visit the section entitled ''Get Involved'' at *http://www.eere.energy.gov/amp*.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should email *amp@ostp.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–29424 Filed 11–14–11; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology

Notice of Meeting: Open Regional Meeting of the President's Council of Advisors on Science and Technology, Working Group on Advanced Manufacturing.

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for an open regional meeting of the President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing, and describes the functions of the Council and its Working Group.

DATES: November 28, 2011.

ADDRESSES: The meeting will be held at the Cambridge Marriott, Two Cambridge Center, 50 Broadway, Cambridge, MA 02142.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing will hold a Northeast regional meeting at the Cambridge Marriott near the campus of the Massachusetts Institute of Technology (MIT) from 10 a.m. to 5:30 p.m. on November 28, 2011.

Advanced manufacturing will provide the basis for high-quality jobs for Americans and sustain U.S. competitiveness in the 21st century. To ensure that the United States attracts manufacturing activity and remains a leader in knowledge production, PCAST recommended in its June 2011 ''Report to the President on Ensuring American Leadership in Advanced Manufacturing'' that the Federal Government create a fertile environment for innovation and make investments to ensure that new technologies and design methodologies are developed in the United States, and that technology-based enterprises have the infrastructure to flourish here.

On the basis of that report, President Obama established PCAST's Advanced Manufacturing Partnership (AMP) Steering Committee to provide additional advice to the government on how to catalyze investment in and deployment of emerging technologies with the potential to transform U.S. manufacturing. In addition, the AMP Steering Committee is to identify the collaborative approaches needed to realize these opportunities. During this regional meeting, members of the public will have an opportunity to provide their thoughts on:

- Technology development;
- Education and workforce development;
- Facility and infrastructure sharing;
- Policies that could create a fertile innovation environment.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available at *http://mit.edu/manufacturing/.* For questions regarding the facility and location-focused questions, please send an email to *amp-event-mit@mit.edu.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis. Additional regional meetings are scheduled in Berkeley, California (December 5), and Ann Arbor, Michigan (December 12).

More information about AMP is available at: *http://whitehouse.gov/ostp/pcast/amp* and *http://www.eere.energy.gov/amp.* Questions about AMP should be directed to *amp@ostp.gov.* For those who would like to get involved in AMP, but are unable to attend the regional meetings, you may visit the section entitled ''Get Involved'' at *http://www.eere.energy.gov/amp.*

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him

from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should email *amp@ostp.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–29429 Filed 11–14–11; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology

Notice of Meeting: Open Regional Meeting of the President's Council of Advisors on Science and Technology, Working Group on Advanced Manufacturing.

ACTION: Public notice.

SUMMARY: This notice sets forth the schedule and summary agenda for an open regional meeting of the President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing, and describes the functions of the Council and its Working Group.

DATES: December 5, 2011.

ADDRESSES: The meeting will be held at the Bechtel Engineering Center, Sibley Auditorium, University of California, Berkeley, Berkeley, CA 94708.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST), Working Group on Advanced Manufacturing will hold a regional meeting at the University of California, Berkeley from 8:30 a.m. to 2 p.m. on December 5, 2011.

Advanced manufacturing will provide the basis for high-quality jobs for Americans and sustain U.S. competitiveness in the 21st century. To ensure that the United States attracts manufacturing activity and remains a leader in knowledge production, PCAST recommended in its June 2011 ''Report to the President on Ensuring American Leadership in Advanced Manufacturing'' that the Federal government create a fertile environment for innovation and make investments to ensure that new technologies and design methodologies are developed in the United States, and that technology-based enterprises have the infrastructure to flourish here.

On the basis of that report, President Obama established PCAST's Advanced Manufacturing Partnership (AMP) Steering Committee to provide additional advice to the government on how to catalyze investment in and deployment of emerging technologies with the potential to transform U.S. manufacturing. In addition, the AMP Steering Committee is to identify the collaborative approaches needed to realize these opportunities. During this regional meeting, members of the public will have an opportunity to provide their thoughts on:

- Technology development
- Education and workforce development
- Facility and infrastructure sharing
- Policies that could create a fertile innovation environment.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available at *http://ampsf.org.* For questions regarding the facility and location-focused questions, please send an email to *bears@berkeley.edu*.

Please note that public seating for this meeting is limited and is available on a first-come, first-served basis. Additional regional meetings are scheduled in Cambridge, Massachusetts (November 28), and Ann Arbor, Michigan (December 12).

More information about AMP is available at: *http://whitehouse.gov/ostp/pcast/amp* and *www.eere.energy.gov/amp.* Questions about AMP should be directed to *amp@ostp.gov.* For those who would like to get involved in AMP, but are unable to attend the regional meetings, you may visit the section entitled ''Get Involved'' at *http://www.eere.energy.gov/amp*.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. *See* the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should email *amp@ostp.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–29432 Filed 11–14–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will host the SEC Government-Business Forum on Small Business Capital Formation on Thursday, November 17, 2011, beginning at 9 a.m., in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington, DC.

This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The forum will include remarks by SEC Commissioners and panel discussions that Commissioners may attend. Panel topics will include current capital formation issues for private

companies and initial public offerings and securities regulation involving smaller public companies. Members of the public may attend the forum without charge. The Commissioner remarks and panel discussions will be webcast from the SEC's Web site. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 10, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29622 Filed 11–10–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 17, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 17, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjucatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 10, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29623 Filed 11–10–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65711; File No. SR–NASDAQ–2011–148]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees to C2

November 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in [brackets].

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

* * * * *

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com Web site.

Exchange	Customer	Firm	MM	Professional
BATS	$0.36	$0.55	$0.55	$0.36
BOX	$0.06	$0.55	$0.55	$0.06
CBOE	$0.06	$0.55	$0.55	$0.26
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	$0.24	$0.55	$0.55	$0.26
C2	$0.[31]*50*	$0.55	$0.55	$0.[46]*51*
ISE	$0.06	$0.55	$0.55	$0.24
ISE Select Symbols*	$0.18	$0.55	$0.55	$0.34
NYSE Arca Penny Pilot	$0.50	$0.55	$0.55	$0.50
NYSE Arca Non Penny Pilot	$0.06	$0.55	$0.55	$0.06
NYSE AMEX	$0.06	$0.55	$0.55	$0.26
PHLX (for all options other than PHLX Select Symbols)	$0.06	$0.55	$0.55	$0.26
PHLX Select Symbols**	$0.30	$0.55	$0.55	$0.46

*These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

**These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing fees assessed for option orders entered into NOM but routed to and executed on away markets (''Routing Fees''). Specifically, NASDAQ is proposing to amend Customer and Professional Routing Fees for orders routed to the C2 Options Exchange, Inc. (''C2'').

The Exchange currently assesses the following Routing Fees to route orders to C2: A Customer is assessed $0.31 per contract; a Firm is assessed $0.55 per contract; a Market Maker is assessed $0.55 per contract; and a Professional is assessed $0.46 per contract. The Exchange is proposing to amend the Customer Routing Fee to C2 from $0.31 per contract to $0.50 per contract and the Professional Routing Fee from $.33 [sic] to $.45 [sic] per contract. The other C2 Routing Fees for Firms and Market Makers would remain the same.

C2 recently amended its Fees Schedule to increase its public customer taker fee from $.25 per contract to $.44 per contract and to increase its professional taker fee from $.33 per contract to $.45 per contract.[3] The Exchange is proposing to amend its Customer and Professional Routing Fees to C2 to account for this increase. In addition, NASDAQ Options Services LLC (''NOS''), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange is proposing this amendment in order to recoup Customer[4] and Professional[5] clearing and transaction charges incurred by the Exchange when orders are routed to C2.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that these fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer and Professional orders to C2 on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fees will enable the Exchange to recover the public customer and professional transaction fees assessed by C2, plus clearing fees for the execution of Customer and Professional orders. The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because they will be uniformly applied to all Customers and Professionals.

NASDAQ is one of nine options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and paragraph (f)(2) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–148 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–2011–148. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[3] *See* SR–C2–2011–032.

[4] The Exchange is proposing to recoup the $.44 per contract public customer transaction fee for orders routed to C2 along with the $0.06 clearing fee which is incurred by the Exchange, as explained above. *See* C2 Fees Schedule.

[5] The Exchange is proposing to recoup the $.45 per contract professional transaction fee for orders routed to C2 along with the $0.06 clearing fee which is incurred by the Exchange, as explained above. *See* C2 Fees Schedule.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–148 and should be submitted on or before December 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–29441 Filed 11–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65717; File No. SR–NASDAQ–2011–150]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Investor Support Program, Offer an Additional Liquidity Provider Credit Through a Pre-Market Investor Program, and Make Other Changes to Pricing for Members Using the NASDAQ Market Center

November 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify its Investor Support Program, offer an additional liquidity provider credit through a pre-market investor program, and make other changes to pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on November 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Investor Support Program

The Exchange is proposing changes to the credit provisions of Rule 7014 to modify the structure of its Investor Support Program. The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (''targeted liquidity'').[3] The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[4] The Exchange noted in the ISP Filing that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange now proposes modifications to the ISP designed to broaden participation by members with targeted liquidity and create a clearer incentive structure. First, NASDAQ is modifying the definition of ''Baseline Participation Ratio'' to allow a greater number of members to participate in the program. In general terms, the Baseline Participation Ratio is the ratio of shares of liquidity provided by the member in NASDAQ for the month of August 2010 to the total consolidated volume for that month. To the extent that a member's participation in NASDAQ exceeds its Baseline Participation Ratio (*i.e.,* to the extent that the member increases its participation in NASDAQ above August 2010 levels), the member may be eligible for the program.[5] The current definition of Baseline Participation Ratio is ''with respect to a member, such member's Participation Ratio [6] for the

[3] For a detailed description of the Investor Support Program as originally implemented, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness) (the ''ISP Filing''). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (NASDAQ–2010–153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (NASDAQ–2010–154) (notice of filing and immediate effectiveness); 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (NASDAQ–2011–022) (notice of filing and immediate effectiveness); and 64050 (March 8, 2011), 76 FR 13694 (March 14, 2011) (SR–NASDAQ–2011–034).

[4] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. *See also* Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[5] As discussed below, the ISP is being modified such that participation must equal or exceed past levels.

[6] The term ''Participation Ratio'' is defined as: ''for a given member in a given month, the ratio of (A) The number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated

month of August 2010, provided that in calculating the August 2010 Participation Ratio, the numerator shall be increased by the amount (if any) of the member's August 2010 Indirect Order Flow,[7] and provided further that if the result is zero, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).''

NASDAQ is proposing to modify the definition to allow a member's Baseline Participation Ratio to be based on the lower of its Participation Ratio for August 2010 or August 2011. Thus, to the extent that a member's participation in the ISP was limited by having a high Participation Ratio in August 2010, the member might have greater eligibility to participate to the extent that its Participation Ratio was lower in August 2011 than in August 2010. On the other hand, a current participant with a low ratio in August 2010 would be eligible to continue to participate based on that ratio. The revised definition will read as follows: ''with respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).''

Second, NASDAQ is proposing to allow a member that is eligible to participate in the ISP to receive a credit with respect to all of the displayed liquidity that it provides through NASDAQ, not merely liquidity provided above the level of the Baseline Participation Ratio, as is currently the case. However, because a credit will be provided with respect to more shares, the level of the credit will be lowered in some cases.

Currently, a member that participates in the ISP program receives a credit of $0.0003, $0.0004, or $0.0005 per share with respect to the lower of (i) The number of shares of displayed liquidity provided by the member through ports designated for ISP use that execute at $1 or more per share; [8] or (ii) the member's ''Added Liquidity,'' which is a measure of the extent to which the member's participation in the market exceeds its Baseline Participation Ratio.[9] The precise credit rate—$0.0003, $0.0004, or $0.0005 per share—is determined by factors designed to measure the degree of the member's participation in the Nasdaq Market Center and the percentage of orders that it enters that execute—its ''ISP Execution Ratio''—which is seen as indicative of retail or institutional participation. Under the proposed change, a credit will be paid with respect to all displayed liquidity-providing orders that execute at a price of $1 or more, provided the member satisfies the criteria described below, which are likewise designed to be indicative of retail or institutional participation. The rates of the credit vary based on criteria similar to those currently in use.

Under the revised program, NASDAQ will pay a credit of $0.0001 per share with respect to all of a member's displayed liquidity-providing orders that execute at a price of $1 or more per share during the month if the following conditions are met:

(1) The member's Participation Ratio for the month is equal to or greater than its Baseline Participation Ratio. Thus, the percentage of Consolidated Volume represented by the member's liquidity-providing orders must be equal to or greater than the member's percentage in either August 2010 or August 2011. The requirement reflects the expectation that a member participating in the program must maintain or increase its participation in NASDAQ as compared with an historical baseline.

(2) As is currently the case, the member's ''ISP Execution Ratio'' for the month must be less than 10.[10] The ISP Execution Ratio is defined as ''the ratio of (A) The total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation; [11] and (iii) no order shall be included in the tabulation if it executes but does not add liquidity.'' [12] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month. This requirement replaces a provision stipulating that a participant's liquidity provision through ISP-designated ports may not average less than 10 million shares per day. The requirements are generally comparable, in that they require a certain base level of usage of ISP ports. However, because the new requirement is based on a percentage of Consolidated Volume, rather than an absolute amount of shares, it adjusts to reflect changes in market volumes from month to month.

(4) At least 25% of the liquidity provided by the member during the month is provided through ISP-designated ports. This new requirement is designed to mitigate ''gaming'' of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders. Because, under the modified program, an ISP credit will be paid with respect to all liquidity-providing orders, the change is especially important to insure that the program remains focused on its purpose of encouraging greater

Volume.'' The term ''Consolidated Volume'' is defined as: ''for a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' The term ''System Securities'' is defined in Rule 4751(b) as: ''all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.''

[7] The term ''Indirect Order Flow'' is defined as: ''for a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member's direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month.'' Thus, the term allows a member to include orders that it entered through another member in calculating the baseline.

[8] A participant in the ISP must designate specific order-entry ports for use in tabulating certain requirements under the program.

[9] Specifically, ''Added Liquidity'' is defined as: ''for a given member in a given month, the number of shares calculated by (i) Subtracting from such member's Participation Ratio for that month the member's Baseline Participation Ratio, and the (ii) multiplying the resulting difference by the average daily Consolidated Volume; provided that if the result is a negative number, the Added Liquidity amount shall be deemed zero.''

[10] Under the current provisions of Rule 7014(c), it is stated that a member may not participate in the ISP if its ISP Execution Ratio is 10 or above. Under the revised rule, it is stated that a member may participate in the ISP if its ISP Execution Ratio is less than 10. The change is intended to promote the clarity of the rule, but is not a substantive change.

[11] These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of ''immediate or cancel'' orders and therefore cannot be liquidity-providing orders.

[12] Clause (iii) of the definition is redundant, since all orders that do not provide liquidity are otherwise excluded by the remainder of the definition. Accordingly, NASDAQ is also proposing to delete the clause.

participation in NASDAQ by retail and institutional investors.

Alternatively, NASDAQ will pay a credit of $0.0003 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.43%.[13]

(2) As is currently the case, the member's ''ISP Execution Ratio'' for the month must be less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports. Thus, the higher credit requires that a greater percentage of the member's order flow has execution ratio characteristics associated with retail and institutional order flow.

Finally, NASDAQ will pay a credit of $0.0004 per share with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.0001 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.86%.[14]

(2) As is currently the case, the member's ''ISP Execution Ratio'' for the month must be less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports.

Because the program will now pay eligible participants with respect to all liquidity provided, rather than only with respect to liquidity added in excess of the Baseline Participation Ratio, the definition of ''Added Liquidity'' is being deleted. In addition, under the current program, a member may add or remove the designation of a port for ISP use for a given month, provided the member provides notice to NASDAQ by the first day of the month. This provision will remain in effect for a member's existing ports. However, if a member adds a new port and designates it for ISP use, the designation of that port will take effect immediately, even if it occurs in the middle of the month. The existing provision ensures that members and NASDAQ will not be required to prorate order flow for the purpose of making the calculations required under the program. In the case of a new port, however, all of the order flow under the designated port during the course of the month can be counted without having to remove flow from days prior to the designation.

Pre-Market Investor Program

NASDAQ is introducing a Pre-Market Investor Program (the ''PMI program'') to encourage greater use of NASDAQ's facilities for trading before the market open at 9:30 a.m. and through the trading day. The goal of the PMI is to encourage the development of a deeper, more liquid trading book during pre-market hours, while also recognizing the correlation observed by NASDAQ between levels of liquidity provided during pre-market hours and levels provided during regular trading hours. Under the program, a member will be required to designate one or more market participant identifiers (''MPIDs'') for use under the program.[15] The member will then qualify for an extra rebate of $0.0001 per share with respect to all of displayed liquidity provided through a designated MPID that executes at a price of $1 or more during the month if the following conditions are met:

(1) The MPID's ''PMI Execution Ratio'' for the month is less than 10. Similar to the ISP Execution Ratio, the PMI Execution Ratio is defined as ''the ratio of (A) The total number of liquidity-providing orders entered by a member through a PMI-designated MPID during the specified time period to (B) the number of liquidity-providing orders entered by such member through such PMI-designated MPID and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.'' Thus, the requirement stipulates that a high proportion of potentially liquidity-providing orders entered through the MPID actually execute and provide liquidity. Similar to the ISP, this requirement is designed to focus the availability of the program on members representing retail and institutional customers.

(2) The member provides an average daily volume of 2 million or more shares of liquidity during the month using orders that are executed prior to NASDAQ's Opening Cross. NASDAQ has observed that members that provide higher volumes of liquidity-providing orders during the pre-market hours generally do so throughout the rest of the trading day. Accordingly, the PMI pays a credit with respect to all liquidity-providing orders, but only in the event that comparatively large volumes of such orders execute in pre-market hours.

(3) The ratio between shares of liquidity provided through the MPID and total shares accessed, provided, or routed through the MPID during the month is at least 0.80. This requirement reflects the PMI's goal of encouraging members that provide high levels of liquidity in pre-market hours to also do so during the rest of the trading day.

The new program is similar to a fee provision of the EDGX Exchange under which a favorable execution fee and rebate are offered to members that add or route an average of more than 4 million shares of liquidity during pre-market and/or post-market hours.[16]

Change in Rule 7018 Rebate Provisions

NASDAQ is making a minor modification to its fee and credit schedule for transaction executions in Rule 7018(a)[17] to broaden the conditions under which a member may qualify for a liquidity provider rebate of $0.0025 per share executed with respect to displayed liquidity (and $0.0010 per

[13] Under the current provisions of Rule 7014(c), it is stated that a member may not receive a higher credit at currently specified rates if the member does not exceed its Baseline Participation Ratio by at least 0.43%. Under the revised rule, it is stated that a member may receive a credit at the $0.0003 rate if the member exceeds its Baseline Participation Ratio by at least 0.43%. The change is intended to promote the clarity of the rule, but is not a substantive change.

[14] Under the current provisions of Rule 7014(c), it is stated that a member may not receive a higher credit at currently specified rates if the member does not exceed its Baseline Participation Ratio by at least 0.86%. Under the revised rule, it is stated that a member may receive a credit at the $0.0004 rate if the member exceeds its Baseline Participation Ratio by at least 0.86%. The change is intended to promote the clarity of the rule, but is not a substantive change.

[15] Similar to the ISP, after the initial designation of Nasdaq MPIDs for PMI use, a member may add or remove such PMI designations for existing MPIDs, provided that Nasdaq must be appropriately notified of such a change on or before the first trading day of the month when the change is to become effective. A newly established MPID may be designated for PMI use immediately upon establishment.

[16] *http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx.*

[17] Rule 7018(a) applies to executions at $1 or more per share.

share executed with respect to non-displayed liquidity). Currently, a member qualifies for this rebate tier if:

(1) It has an average daily volume in all securities of more than 20 million shares of liquidity provided through one or more of its Nasdaq Market Center MPIDs;

(2) It accesses shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs representing more than 0.45% of the Consolidated Volume during the month; provided that the member also provides a daily average of at least 2 million shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs during the month; or

(3) The member has (i) Shares of liquidity provided in all securities during the month representing more than 0.10% of the Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) an average daily volume during the month of more than 115,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs.

In addition to these methods of achieving this rebate tier, NASDAQ will also make the tier available to a member that (i) Provides liquidity through one or more MPIDs representing 0.10% of the Consolidated Volume during the month; and (ii) accesses shares of liquidity representing more than 0.20% of the Consolidated Volume during the month.

Housekeeping Changes

NASDAQ is also making a few ''housekeeping'' changes to the fee rules. Specifically, NASDAQ is deleting rule language that governed a pilot ''attributable market provider program,'' which, by its terms, expired on September 30, 2011. NASDAQ is also redesignating the definition section of Rule 7014 from Rule 7014(d) to Rule 7014(g), to allow the insertion of provisions relating to the PMI. NASDAQ is renumbering provisions of this definition section to reflect the deletion of the definition of ''Added Liquidity'', and is making changes to Rule 7014(h) (formerly 7014(e)) to allow NASDAQ to obtain information from members with regard to compliance with requirements of the PMI (as well as the ISP) and to correct a typographical error. NASDAQ is also adding a definition of ''Nasdaq Opening Cross'' to the definitions of Rule 7014. Finally, NASDAQ is redesignating clauses in the definitions of ISP Execution Ratio and Participation Ratio to enhance their clarity, and deleting redundant language from the definition of ISP Execution Ratio.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The ISP encourages members to add targeted liquidity that is executed in the NASDAQ Market Center. The primary objective in making the enhancements to the ISP reflected in the proposed rule change is to add an even greater amount of targeted liquidity to the Exchange. Specifically:

(i) The proposed rule change introduces a requirement that participants provide specified percentages of liquidity through ISP-designated ports. Because ISP-designated ports are required to have a low ratio of orders to executions, a characteristic reflective of targeted liquidity, the added requirement that a percentage of all of the member's provided liquidity comes through such ports provides further assurance that ISP participants represent targeted liquidity.

(ii) The proposed rule change replaces a requirement that liquidity provided through ISP-designated ports average at least 10 million shares per day with a corresponding requirement that such liquidity constitute at least 0.2% of Consolidated Volume. The change is not intended to materially impact the scope of the program, but rather to allow it to adjust to months with varying market volumes.

(iii) The change reduces the credit rates payable under the program from $0.0003, $0.0004, and $0.0005 to $0.0001, $0.0003, and $0.0004, but expands the shares to which the rates apply to include all displayed liquidity provided at a price of $1 or more. The change is intended to simplify member's calculations of expected credits by making them applicable to all shares, but lower the rates to avoid an excessive increase in the cost of the program.

(iv) The change enhances the availability of the program to a wider range of members representing targeted liquidity by modifying the Baseline Participation Ratio to reflect the lower of a member's participation in August 2010 or August 2011. Given the requirement that ISP participations must equal or exceed their baseline participation in the market, the change will enhance the value of the program to members whose market participation was higher in 2010 than in 2011, thereby encouraging them to again increase their participation.

(v) The change enhances the flexibility of the program with respect to designation of new ports for ISP use.

NASDAQ believes that the overall effect of these changes is to ensure that the program is focused as carefully as possible on targeted liquidity, to ensure that as many firms representing targeted liquidity as possible are eligible to participate, and to simplify the calculation of such member's credits. The rule change proposal, like the original ISP, is not designed to permit unfair discrimination, but rather is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Likewise, the proposal, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. As explained in the immediately preceding paragraphs, the proposal enhances the goal of the ISP. Members who choose to significantly increase the volume of ISP-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to them, as contemplated in the proposed enhanced program, is equitable. Moreover, NASDAQ believes that the level of the credit—$0.0001, $0.0003, or $0.0004 per share, in addition to credits ranging from $0.0010 to $0.00295 per share under NASDAQ regular transaction execution fee and rebate schedule—is reasonable.

The proposed Pre-Market Investor Program is similarly designed to attract greater liquidity to NASDAQ, with a particular emphasis on encouraging a deeper and more liquid book during pre-market hours and recognizing and further encouraging the observed correlation between liquidity provision during pre-market hours and throughout the trading day. Accordingly, in a manner comparable to the ISP, the PMI will provide an additional credit to members that satisfy criteria designed to be indicative these patterns of market participation. Thus, a participant in the program is required to designate MPIDs with a low ratio between orders entered and executions; to provide a specified

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

volume of liquidity during pre-market hours; and to maintain a high ratio of liquidity provision to order execution throughout the month.

The PMI, like the ISP, is not unfairly discriminatory because it is intended to promote submission of liquidity-providing orders to NASDAQ, which benefits all NASDAQ members and all investors. Likewise, the PMI, like the ISP, is consistent with the Act's requirement for the equitable allocation of reasonable dues, fees, and other charges. Members who choose to significantly increase the volume of PMI-eligible liquidity-providing orders that they submit to NASDAQ would be benefitting all investors, and therefore providing credits to them, as contemplated in the proposed enhanced program, is equitable. Moreover, NASDAQ believes that the level of the credit—$0.0001 per share, in addition to credits ranging from $0.0010 to $0.00295 per share under NASDAQ regular transaction execution fee and rebate schedule—is reasonable.

With regard to the additional rebate tier in NASDAQ's transaction execution fee and credit schedule, NASDAQ believes that this change is reasonable because it will provide an additional means by which members may qualify for an enhanced rebate, without eliminating any of the existing means of qualifying for the rebate level in question. NASDAQ further believes that the change is equitable and non-discriminatory, because it is designed to encourage greater levels of liquidity provision, which benefits all market participants, and because it is open to all market participants on the same terms.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the changes to the ISP, the PMI, and the additional rebate tier are all designed to increase the credits provided to members that enhance NASDAQ's market quality through liquidity provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–150 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–2011–150. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–150 and should be submitted on or before December 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–29442 Filed 11–14–11; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65705; File No. SR–ISE–2011–70]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Another Tier to an Existing Rebate Program for Qualified Contingent Cross Orders and Solicitation Orders Executed on the Exchange

November 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 25, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to add another tier to an existing rebate program for Qualified Contingent Cross (''QCC'') orders and Solicitation orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to add another tier to an existing rebate program applicable to Members who submit QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.[3] Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation traded contracts for that month. The rebate is paid to the Member entering a qualifying order, i.e., a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating contract sides	Rebate per contract
0–1,699,999	$0.00
1,700,000–2,499,999	0.03
2,500,000–3,499,999	0.05
3,500,000+	0.07

Prior to this proposed rule change, in order for a Member to receive a rebate, it had to transact at least 1,700,000 qualifying contracts. The Exchange now proposes to adopt a $0.01 rebate per contract that is payable to Members who send a minimum of 100,000 contracts and up to 1,699,999 contracts. The Exchange believes the proposed new tier will result in the Exchange providing a rebate to more Members. With the proposed new tier, the volume threshold and corresponding rebate per contract will be as follows:

Originating contract sides	Rebate per contract
0–99,999	$0.00
100,000–1,699,999	0.01
1,700,000–2,499,999	0.03
2,500,000–3,499,999	0.05
3,500,000+	0.07

Further, the Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a select number of options classes (the ''Select Symbols'').[4] For Solicitation orders in the Select Symbols, the Exchange currently provides a rebate of $0.15 to contracts that do not trade with the contra order in the Solicited Order Mechanism. The Exchange does not propose any change to that rebate and that rebate will continue to apply.

The Exchange has designated this proposal to be operative on November 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[5] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members. The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal to add another tier is reasonable as it will encourage Members who direct their QCC and Solicitation orders to the Exchange to continue to do so instead of sending this order flow to a competing exchange. With this proposed new tier, more Members will now receive a rebate for sending their QCC and Solicitation orders to the Exchange.

The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders;[7] and tiered pricing

[3] *See* Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); and 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68).

[4] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] For example, the customer fee is $0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

that reduces rates for market makers based on the level of business they bring to the Exchange.[8] This proposed rule change targets a particular segment in which the Exchange seeks to garnish greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade a minimum of 100,000 contracts in QCC and Solicitation orders on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–70 and should be submitted on or before December 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[8] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65710; File No. SR–NYSEAmex–2011–55]

Self-Regulatory Organizations; NYSE Amex LLC; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 2, Amending Section 101 of the NYSE Amex Company Guide To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company, November 8, 2011

I. Introduction

On July 22, 2011, NYSE Amex LLC (''NYSE Amex'' 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 adopting additional listing requirements for a company that has become an Act reporting company by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger''). The proposed rule change was published for comment in the **Federal Register** on August 10, 2011.[3] On September 21, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved to November 8, 2011.[4] The Commission received two comment letters on the proposal.[5] NYSE Amex filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522 (''Notice'').

[4] *See* Securities Exchange Act Release No. 65369 (September 21, 2011), 76 FR 59763 (September 27, 2011).

[5] *See* Letter from David Feldman, Partner, Richardson and Patel LLP dated August 29, 2011 (''Feldman Letter'') and Letter to Elizabeth M. Murphy, Secretary, Commission, from WestPark Capital, Inc. dated August 31, 2011 (''WestPark Letter''). In addition, the Commission received five comment letters on a substantially similar proposal by Nasdaq, three of which were filed by parties that did not specifically comment on the NYSE Amex

Amendment No. 1 to the proposed rule change on November 4, 2011, which was later withdrawn.[6] NYSE Amex filed Amendment No. 2 to the proposed rule change on November 8, 2011.[7] This order approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Original Proposal

The Exchange proposes to adopt more stringent listing requirements for companies that become public through a Reverse Merger, to address significant regulatory concerns including accounting fraud allegations that have arisen with respect to Reverse Merger companies. In its filing, the Exchange noted that the Commission has taken direct action against Reverse Merger companies. In addition, the Exchange noted that the Commission has suspended trading in, and revoked the securities registration of, a number of Reverse Merger companies.[8] The Exchange also stated that the Commission recently brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger companies[9] and issued a bulletin on the risks of investing in Reverse Merger companies, noting potential market and regulatory risks related to investing in such companies.[10]

In response to the concerns noted above, the Exchange proposed to adopt additional listing requirements for Reverse Merger companies.[11] Specifically, NYSE Amex proposed to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, for at least one year following the filing of all required information about the Reverse Merger transaction, including audited financial statements, with the Commission. The Reverse Merger company would also be required to timely file with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of all required information about the Reverse Merger transaction and satisfying the one-year trading requirement. Further, NYSE Amex proposed to require that the Reverse Merger company maintain on both an absolute and an average basis for a sustained period a minimum stock price equal to the stock price requirement applicable to the initial listing standard under which the Reverse Merger company is qualifying to list. Finally, the Exchange proposed an exception from the requirements of the rule if the Reverse Merger company is listing in connection with an initial firm commitment underwritten public offering where the proceeds to the company will be at least $40 million.

III. Comment Summary

As stated previously, the Commission received two comment letters on the proposal.[12] However, a related proposal by Nasdaq received five comment letters.[13] The Commission is treating the thee comment letters submitted on the Nasdaq filing, for which a comparable letter was not submitted on the NYSE Amex filing, as also being applicable to the NYSE Amex filing since the NYSE Amex and Nasdaq filings address the same substantive issues.[14] Two of the commenters objected broadly to the proposed additional listing requirements for Reverse Merger companies,[15] while three commenters suggested discrete changes to the proposal.[16]

One commenter who objected broadly to NYSE Amex's proposal expressed the view that it could have a ''chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital.'' [17] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning requirement, the commenter suggests the Exchange review regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, the commenter recommends an exception from the seasoning requirement for a company coming to the Exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days

filing. (*See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (June 14, 2011) (SR–NASDAQ–2011–073)). The comment letters received on the Nasdaq filing, for which a counterpart was not received on the NYSE Amex filing are: Letter to Elizabeth M. Murphy, Secretary, Commission, from Locke Lord LLP dated October 17, 2011 (''Locke Lord Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from James N. Baxter, Chairman and General Counsel, New York Global Group dated October 17, 2011 (''New York Global Group Letter''); and Letter to Elizabeth M. Murphy, Secretary, Commission, from David A. Donohoe, Jr., Donohoe Advisory Associates LLC dated October 18, 2011 (''Donohoe Letter''). Two of the comment letters submitted on the Nasdaq filing specifically referenced this proposal by NYSE Amex. However, the Commission believes all of the filings submitted on the Nasdaq filing are applicable to this filing. Since the comment letters received on the Nasdaq filing either specifically reference the NYSE Amex filing, or discuss issues directly related to this filing, the Commission has included them in its discussions of this filing.

[6] Amendment No. 1, dated November 4, 2011, was withdrawn on November 8, 2011.

[7] *See* Amendment No. 2, dated November 8, 2011. Amendment No. 2 replaces Amendment No. 1 in its entirety. In Amendment No. 2, NYSE Amex made several changes to the proposed rule change. The changes proposed by NYSE Amex include: (i) Amending the proposed price requirement to make is applicable for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days; (ii) added a new exception from certain requirements contained in the rule for companies that conducted their reverse merger a substantial length of time before applying to list; and (iii) other additional changes to clarify the rule and harmonize it with a similar proposal by Nasdaq.

[8] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[9] *See* Schapiro Letter at page 4.

[10] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

[11] In addition to the specific additional listing requirements contained in the proposal, the Exchange included language in the proposed rule that states that the Exchange may ''in its discretion impose more stringent requirements than those set forth above if the Exchange believes it is warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that are not subject to transfer restrictions, if the Reverse Merger Company has not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company has disclosed that it has material weaknesses in its internal controls which have been identified by management and/or the Reverse Merger Company's independent auditor and has not yet implemented an appropriate corrective action plan.''

[12] *See* Feldman Letter and WestPark Letter.

[13] As is stated above in note 5, two of the comment letters submitted on the Nasdaq proposal are substantially similar to comment letters received on the NYSE Amex proposal. *See* Feldman Letter and WestPark Letter. Three of the comment letters submitted on the Nasdaq proposal were not also submitted on the NYSE Amex proposal. *See* Locke Lord Letter; New York Global Group Letter; and Donohoe Letter. Two of the comment letters submitted on the Nasdaq filing specifically reference the NYSE Amex filing. *See* Locke Lord Letter and Donohoe Letter.

[14] In instituting disapproval proceedings for the Nasdaq proposal, the Commission stated that the NYSE and NYSE Amex had filed similar proposals designed to address the same concerns as the Nasdaq proposal.

[15] *See* Feldman Letter and New York Global Group Letter.

[16] *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[17] *See* Feldman Letter.

prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggested it be eliminated.[18]

The other commenter that objected broadly to the proposal believed that the proposal would harm capital formation and hinder small companies' access to the capital markets.[19] The commenter expressed the view that no objective research or hard data has been published that supports the notion that Reverse Merger companies bear additional scrutiny, and that the Commission should not approve the proposal until an independent and comprehensive study concludes that (i) Exchange listed reverse merger companies tend to fail more often than IPO companies, thus necessitating the additional scrutiny, (ii) the proposed six to twelve month ''seasoning'' for reverse merger companies will indeed deter corporate frauds, and (iii) the exchanges do not already have sufficient rules in place to discourage corporate frauds in both reverse merger and IPO companies.[20] Based on its research, the commenter believes that more Chinese companies have been delisted that have gone public through an IPO than through a Reverse Merger, and that they were delisted more than three years after they became public, which is well beyond the seasoning period.[21]

A third commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices or other inappropriate behavior on the part of companies, promoters and others.[22] The commenter, however, recommended that, in order to avoid unnecessary burdens on smaller capitalization issuers, the proposed rule change be modified to exclude Form 10 share exchange transactions from the reverse merger definition, or provide an exception for a reverse merger company listing in connection with a firm commitment underwritten public offering.[23] This commenter also recommended that NYSE Amex consider requiring companies listing on the Exchange to engage a recognized independent diligence firm to conduct a forensic audit and issue a forensic diligence report prior to approval of the listing application.[24]

Another commenter, while it did not believe the Exchange had presented a sufficient rationale or data to support the need for a Reverse Merger seasoning period, agreed that a reasonable seasoning period for Reverse Merger companies could be beneficial, and was of the view that the six-month seasoning period proposed by Nasdaq was preferable to the one-year seasoning period proposed by NYSE and NYSE Amex.[25] The commenter also believed that Nasdaq's proposed requirement that a Reverse Merger company maintain the requisite stock price for at least 30 of the 60 trading days immediately preceding the filing of the listing application was lacking because, among other things, it would not apply to the period during which the listing application was under review.[26] In addition, this commenter expressed support for an underwritten public offering exception, regardless of size, from the proposed rule's additional listing requirement.[27]

A fifth commenter also expressed the view that there should be an exception where the securities issued in the Reverse Merger were registered with the Commission, so that the additional listing standards would be directed toward those transactions that have not been subjected to full Commission review.[28] This commenter also suggested that, if a Reverse Merger company is controlled by a non-U.S. person, the control person should be required to execute a consent to service of process in the U.S.[29]

IV. NYSE Amex Amendment No. 2 and Response to Comments

In Amendment No. 2, NYSE Amex proposed several changes to more effectively align its proposal with that of Nasdaq. NYSE Amex amended its proposal to require that a Reverse Merger company ''maintain a closing stock price equal to the stock price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to the filing of the initial listing application'' and prior to listing. In addition, NYSE Amex amended the requirement that a Reverse Merger company provide all required reports to clarify that such reports must include ''all required'' audited financial statements.

Amendment No. 2 also proposes a new exception to the Reverse Merger rules and clarifies that all other listing requirements are applicable to all Reverse Merger companies, even those Reverse Merger companies that can take advantage of either of the two exceptions being proposed under the new rules. As noted above, as proposed, the rule provides that a Reverse Merger company would not be subject to the requirements of the rule if, in connection with the listing, it completes a firm commitment underwritten public offering where the proceeds to the company will be at least $40 million and the offering is occurring subsequent to or concurrently with the Reverse Merger. Amendment No. 2 additionally proposes that the Reverse Merger company would not be subject to the requirement that it maintain a closing stock price equal to the stock price requirement applicable to the initial listing standard under which the Reverse Merger company is qualifying to list for at least 30 of the most recent 60 days prior to each of the filing of the initial listing application and the date of the Reverse Merger company's listing, if it has satisfied the one-year trading requirement and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing the required information.[30] The amended rule language states that a Reverse Merger company must comply with all applicable listing requirements. Applicable listing standards include, but are not limited to, the corporate governance requirements set forth in Chapter 8 of the NYSE Amex Company Guide (''Guide'') and the applicable distribution, stock price and market value requirements of Sections 102(a) and 102(b) of the Guide. In either case, the language makes clear that companies that fall under the exceptions must also comply with all other listing requirements.

Finally, NYSE Amex made several technical changes in Amendment No. 2, including those to conform its language more closely to that of the Nasdaq proposal.

On November 7, 2011, NYSE Amex responded to the comments received on

[18] *Id.*

[19] *See* New York Global Group Letter.

[20] *Id.*

[21] *Id.*

[22] *See* WestPark Letter.

[23] *Id.*

[24] *Id.*

[25] *See* Donohoe Letter.

[26] *Id.*

[27] *Id.*

[28] *See* Locke Lord Letter.

[29] *Id.*

[30] Amendment No. 2 also proposes that, to be eligible for this exception, such companies be required to (i) Comply with the stock price requirement of Section 102(b) of the Guide at the time of the filing of the initial listing application and the date of the Reverse Merger company's listing and (ii) not be delinquent in its filing obligations with the Commission.

the proposal.[31] One commenter expressed concern, in commenting on the similar NYSE proposal, that the proposal might not provide investors with sufficient protections in relation to listed Reverse Merger companies and noted and welcomed the NYSE's ability to exercise its discretion to apply additional or more stringent criteria to a Reverse Merger company. In response, NYSE Amex noted that the same discretion is included in the NYSE Amex proposal. The NYSE Amex further noted that it does not believe that it is necessary at this time to adopt any additional general requirements for all companies that would be considered for listing under the proposed rules. The Exchange also stated that the proposed approach, in its belief, strikes an appropriate balance by providing discretionary authority to the Exchange to apply additional or more stringent criteria,[32] while also providing transparency as to the factors that would prompt the imposition of such criteria. NYSE Amex believes that it is appropriate to apply those new requirements for a period of time, while closely monitoring the performance of Reverse Merger companies that list under the new rules. If at any time it becomes apparent that there are significant continuing investor protection or regulatory concerns associated with the listing of Reverse Merger companies, NYSE Amex will consider the desirability of adopting additional more stringent requirements.

NYSE Amex noted that the Commission received two negative comment letters in relation to its filing. Both commenters supported the proposed rule's exception for Reverse Merger companies listing in conjunction with an underwritten public offering, but argued that the transaction size requirement should either be eliminated from the proposal or set at a far lower level. The Exchange believes that the substantial offering size requirement provides a significant regulatory benefit. One of the commenters argued that the requirement that a Reverse Merger Company must trade in another market for at least a year prior to listing is unnecessary. As noted in the filing, significant regulatory concerns have arisen with respect to a number of reverse merger companies in recent times. NYSE Amex believes that a ''seasoning'' period prior to listing should provide greater assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified. NYSE Amex believes that the elimination of the one year trading requirement would significantly weaken the value of the seasoning period in that less scrutiny would generally be present. The other commenter argued that the rule should not apply to a Reverse Merger company which resulted from a merger between an operating company and a new shell company with no prior business operations. Based on the Exchange's experience with the listing of Reverse Merger companies, the Exchange believes that it is appropriate to apply the proposed rules to all Reverse Merger companies, regardless of whether the shell company into which the operating company merged had ever had any previous business operations.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–55. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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 NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–55, and should be submitted on or before December 6, 2011.

VI. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 2, and finds that it is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange,[33] and, in particular, Section 6(b)(5) of the Act,[34] which, among other things, requires that the rules of a national securities exchange be 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.

The development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly

[31] *See* Email from John Carey, Chief Counsel, NYSE Regulation Inc., to Sharon Lawson, Senior Special Counsel, Commission and David Michehl, Special Counsel, Commission dated November 7, 2011.

[32] *See supra,* note 11.

[33] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

NYSE Amex proposed to make more rigorous its listing standards for Reverse Merger companies, given the significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to these companies. As noted above, Nasdaq and NYSE filed similar proposals for the same reasons.[35] Among other things, the proposals seek to improve the reliability of the reported financial results of Reverse Merger companies by requiring a pre-listing ''seasoning period'' during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. The proposals also seek to address concerns that some might attempt to meet the minimum price test required for exchange listing through a quick manipulative scheme in the securities of a Reverse Merger company, by requiring that minimum price to be sustained for a meaningful period of time.

The Commission believes the proposed one-year seasoning requirement for Reverse Merger companies that seek to list on the Exchange is reasonably designed to address concerns that the potential for accounting fraud and other regulatory issues is more pronounced for this type of issuer. As discussed above, these additional listing requirements will assure that a Reverse Merger company has produced and has filed with the Commission at least one full year of all required audited financial statements following the Reverse Merger transaction before it is eligible to list on NYSE Amex. The Reverse Merger company also must have filed all required Commission reports since the consummation of the Reverse Merger, which should help assure that material information about the issuer has been filed with the Commission and that the issuer has a demonstrated track record of meeting its Commission filing and disclosure obligations. In addition, the requirement that the Reverse Merger company has traded for at least one year in the over-the-counter market or on another exchange could make it more likely that analysts have followed the company for a sufficient period of time to provide an additional check on the validity of the financial and other information made available to the public.

Although certain commenters expressed concern that the proposal might inhibit capital formation and access by small companies to the markets, the Commission notes that the enhanced listing standards apply only to the relatively small group of Reverse Merger companies—where there have been numerous instances of fraud and other violations of the federal securities laws—and merely requires those entities to wait until their first annual audited financial statements are produced before they become eligible to apply for listing on the Exchange. While fraud and other illegal activity may occur with other types of issuers, as noted by certain commenters, the Commission does not believe this should preclude NYSE Amex from taking reasonable steps to address these concerns with Reverse Merger companies.

The Commission also believes the proposed requirement for a Reverse Merger company to maintain the specified minimum share price for a sustained period, and for at least 30 of the most recent 60 trading days, prior to the date of the initial listing application and the date of listing, is reasonably designed to address concerns that the potential for manipulation of the security to meet the minimum price requirements is more pronounced for this type of issuer. By requiring that minimum price to be maintained for a meaningful period of time, the proposal should make it more difficult for a manipulative scheme to be successfully used to meet the Exchange's minimum share price requirements.

In addition, the Commission believes that the proposed exceptions to the enhanced listing requirements for Reverse Merger companies that (1) Complete a substantial firm commitment underwritten public offering in connection with its listing,[36] or (2) have filed at least four annual reports containing all required audited financial statements with the Commission following the filing of all required information about the Reverse Merger transaction, and satisfying the one-year trading requirement, reasonably accommodate issuers that may present a lower risk of fraud or other illegal activity. The Commission believes it is reasonable for the Exchange to conclude that, although formed through a Reverse Merger, an issuer that (1) Undergoes the due diligence and vetting required in connection with a sizeable underwritten public offering, or (2) has prepared and filed with the Commission four years of all required audited financial statements following the Reverse Merger, presents less risk and warrants the same treatment as issuers that were not formed through a Reverse Merger. Nevertheless, the Commission expects the Exchange to monitor any issuers that qualify for these exceptions and, if fraud or other abuses are detected, to propose appropriate changes to its listing standards.

The Commission notes that certain commenters suggested the Exchange impose specific additional requirements on Reverse Merger companies that seek an exchange listing, such as the completion of an independent forensic diligence report on the issuer, the execution of a consent to service of process in the U.S. by foreign controlling persons, and additional more stringent standards in addition to the proposed seasoning period. Although there may be merit in these or other potential ways to enhance listing standards for Reverse Merger companies, the Commission believes that the additional listing standards proposed by the Exchange should help prevent fraud and manipulation, protect investors and the public interest, and are otherwise consistent with the Act.

The Commission also notes that several of the changes proposed by the Exchange in Amendment No. 2 were clarifying in nature and designed to make its proposal consistent with the proposals submitted by Nasdaq and NYSE.

For the reasons discussed above, the Commission believes that NYSE Amex's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, helping prevent fraud and manipulation associated with Reverse Merger companies, and protecting investors and the public interest.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[37] for approving the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register.** As noted above, the changes made in Amendment No. 2 harmonize the proposed rule change with similar proposals by Nasdaq and NYSE that have been subject to public comment, in addition to providing clarifying language consistent with the

[35] *See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (June 14, 2011) and Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011).

[36] The Commission notes that several commenters supported an exception for issuers with underwritten public offerings. *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[37] 15 U.S.C. 78s(b)(2).

intent of the original rule proposal. In addition, the Commission believes it is in the public interest for NYSE Amex to begin applying its enhanced listing standards as soon as practicable, in light of the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

VII. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEAmex–2011–55), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–29440 Filed 11–14–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65709; File No. SR–NYSE–2011–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 2, Amending Sections 102.01 and 103.01 of the Exchange's Listed Company Manual Adopting Additional Listing Requirements for Companies Applying to List After Consummation of a ''Reverse Merger'' With a Shell Company

November 8, 2011.

I. Introduction

On July 22, 2011, 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 adopting additional listing requirements for a company that has become an Act reporting company by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger''). The proposed rule change was published for comment in the **Federal Register** on August 10, 2011.[3] On September 21, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved to November 8, 2011.[4] The Commission received one comment letter on the proposal.[5] NYSE filed Amendment No. 1 to the proposed rule change on November 4, 2011, which was later withdrawn.[6] NYSE filed Amendment No. 2 to the proposed rule change on November 8, 2011.[7] This order approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Original Proposal

The Exchange proposes to adopt more stringent listing requirements for companies that become public through a Reverse Merger, to address significant regulatory concerns including accounting fraud allegations that have arisen with respect to Reverse Merger companies. In its filing, the Exchange noted that the Commission has taken direct action against Reverse Merger companies. In addition, the Exchange noted that the Commission has suspended trading in, and revoked the securities registration of, a number of Reverse Merger companies.[8] The Exchange also stated that the Commission recently brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger companies[9] and issued a bulletin on the risks of investing in Reverse Merger companies, noting potential market and regulatory risks related to investing in such companies.[10]

In response to the concerns noted above, the Exchange proposed to adopt additional listing requirements for Reverse Merger companies.[11] Specifically, NYSE proposed to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, for at least one year following the filing of all required information about the Reverse Merger transaction, including audited financial statements, with the Commission. The Reverse Merger company would also be required to timely file with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of all required information about the Reverse Merger transaction and satisfying the one-year trading requirement. Further, NYSE proposed to require that the Reverse Merger company maintain on

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (''Notice'').

[4] *See* Securities Exchange Act Release No. 65368 (September 21, 2011), 76 FR 59756 (September 27, 2011).

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from James Davidson, Hermes Equity Ownership Services Limited dated August 31, 2011 (''Hermes Letter''). In addition, the Commission received five comment letters on a substantially similar proposal by Nasdaq. (*See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (June 14, 2011) (SR–NASDAQ–2011–073)). The comment letters received on the Nasdaq filing are: Letter from David Feldman, Partner, Richardson and Patel LLP dated August 20, 2011 (''Feldman Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from WestPark Capital, Inc. dated September 2, 2011 (''WestPark Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Locke Lord LLP dated October 17, 2011 (''Locke Lord Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from James N. Baxter, Chairman and General Counsel, New York Global Group dated October 17, 2011 (''New York Global Group Letter''); and Letter to Elizabeth M. Murphy, Secretary, Commission, from David A. Donohoe, Jr., Donohoe Advisory Associates LLC dated October 18, 2011 (''Donohoe Letter''). One of the comment letters submitted on the Nasdaq filing specifically referenced this proposal by NYSE. However, the Commission believes all of the filings submitted on the Nasdaq filing are applicable to this filing. Since the comment letters received on the Nasdaq filing either specifically reference the NYSE filing, or discuss issues directly related to this filing, the Commission has included them in its discussions of this filing.

[6] Amendment No. 1, dated November 4, 2011, was withdrawn on November 8, 2011.

[7] *See* Amendment No. 2, dated November 8, 2011. Amendment No. 2 replaces Amendment No. 1 in its entirety. In Amendment No. 2, NYSE made several changes to the proposed rule change. The changes proposed by NYSE include: (i) Amending the proposed price requirement to make is applicable for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days; (ii) added a new exception from certain requirements contained in the rule for companies that conducted their reverse merger a substantial length of time before applying to list; and (iii) other additional changes to clarify the rule and harmonize it with a similar proposal by Nasdaq.

[8] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[9] *See* Schapiro Letter at page 4.

[10] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

[11] In addition to the specific additional listing requirements contained in the proposal, the Exchange included language in the proposed rule that states that the Exchange may ''in its discretion impose more stringent requirements than those set forth above if the Exchange believes it is warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that are not subject to transfer restrictions, if the Reverse Merger Company has not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company has disclosed that it has material weaknesses in its internal controls which have been identified by management and/or the Reverse Merger Company's independent auditor and has not yet implemented an appropriate corrective action plan.''

both an absolute and an average basis for a sustained period a minimum stock price of $4 both immediately preceding the filing of the initial listing application and the company's listing on the Exchange. Finally, the Exchange proposed an exception from the requirements of the rule if the Reverse Merger company is listing in connection with an initial firm commitment underwritten public offering where the proceeds to the company are sufficient on a stand-alone basis to meet the aggregate market value of publicly-held shares requirement set forth in Section 102.01B of the Exchange's Listed Company Manual (''Manual'').[12]

III. Comment Summary

As stated previously, the Commission received only one comment letter on the proposal.[13] However, a related proposal by Nasdaq received five comment letters,[14] one of which specifically discusses the NYSE proposal.[15] The Commission is treating all six comment letters as being applicable to the NYSE filing since the NYSE and Nasdaq filing address the same substantive issues.[16] Two of the commenters objected broadly to the proposed additional listing requirements for Reverse Merger companies,[17] while four commenters suggested discrete changes to the proposal.[18]

One commenter who objected broadly to Nasdaq's related proposal expressed the view that it could have a ''chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital.'' [19] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning requirement, the commenter suggests a review of regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, the commenter recommends an exception from the seasoning requirement for a company coming to the Exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggested it be eliminated.[20]

The other commenter that objected broadly to the proposal believed that the proposal would harm capital formation and hinder small companies' access to the capital markets.[21] The commenter expressed the view that no objective research or hard data has been published that supports the notion that Reverse Merger companies bear additional scrutiny, and that the Commission should not approve the proposal until an independent and comprehensive study concludes that (i) Exchange listed reverse merger companies tend to fail more often than IPO companies, thus necessitating the additional scrutiny, (ii) the proposed six to twelve month ''seasoning'' for reverse merger companies will indeed deter corporate frauds, and (iii) the exchanges do not already have sufficient rules in place to discourage corporate frauds in both reverse merger and IPO companies.[22] Based on its research, the commenter believes that more Chinese companies have been delisted that have gone public through an IPO than through a Reverse Merger, and that they were delisted more than three years after they became public, which is well beyond the seasoning period.[23]

The commenter that specifically commented on the NYSE proposed rule change was supportive of the changes proposed but also stated that more stringent listing requirements are necessary to reduce the risk of fraud and other regulatory concerns that can occur when companies seek to list on an exchange quickly and inexpensively through a Reverse Merger with a shell company.[24] This commenter believed that ''further tests'' should be introduced that go beyond the proposed seasoning period, but did not offer any specific suggestions.

A fourth commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices or other inappropriate behavior on the part of companies, promoters and others.[25] The commenter, however, recommended that, in order to avoid unnecessary burdens on smaller capitalization issuers, the proposed rule change be modified to exclude Form 10 share exchange transactions from the reverse merger definition, or provide an exception for a reverse merger company listing in connection with a firm commitment underwritten public offering.[26] This commenter also recommended that an exchange should consider requiring companies listing on the Exchange to engage a recognized independent diligence firm to conduct a forensic audit and issue a forensic diligence report prior to approval of the listing application.[27]

Another commenter, while it did not believe the Exchange had presented a sufficient rationale or data to support the need for a Reverse Merger seasoning period, agreed that a reasonable seasoning period for Reverse Merger companies could be beneficial, and was of the view that the six-month seasoning period proposed by Nasdaq was preferable to the one-year seasoning period proposed by NYSE and NYSE Amex.[28] The commenter also believed that Nasdaq's proposed requirement that a Reverse Merger company maintain the requisite stock price for at least 30 of the 60 trading days immediately preceding the filing of the listing application was lacking because, among other things, it would not apply to the period during which the listing application was under review.[29] In addition, this commenter expressed support for an underwritten public offering exception, regardless of size, from the proposed rule's additional listing requirement.[30]

[12] The Commission notes that Section 102.01B of the Manual would require a company to demonstrate an aggregate market value of publicly-held shares of $40 million for companies that list either at the time of their initial public offerings or as a result of spin-offs or under the affiliated company standard or, for companies that list at the time of their initial firm commitment underwritten public offering and $100 million for other companies.

[13] *See* Hermes Letter.

[14] *See* Feldman Letter; WestPark Letter; Locke Lord Letter; New York Global Group Letter; and Donohoe Letter.

[15] *See* Locke Lord Letter.

[16] In instituting disapproval proceedings for the Nasdaq proposal, the Commission stated that the NYSE and NYSE Amex had filed similar proposals designed to address the same concerns as the Nasdaq proposal.

[17] *See* Feldman Letter and New York Global Group Letter.

[18] *See* Hermes Letter; WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[19] *See* Feldman Letter.

[20] *Id.*

[21] *See* New York Global Group Letter.

[22] *Id.*

[23] *Id.* As noted above, the comment letter refers specifically to Nasdaq, but applies equally to the NYSE proposal.

[24] *See* Hermes Letter.

[25] *See* WestPark Letter.

[26] *Id.*

[27] *Id.* As noted above, this comment letter was specifically addressed to Nasdaq, but applies equally to the NYSE proposal.

[28] *See* Donohoe Letter.

[29] *Id.*

[30] *Id.*

A sixth commenter also expressed the view that there should be an exception where the securities issued in the Reverse Merger were registered with the Commission, so that the additional listing standards would be directed toward those transactions that have not been subjected to full Commission review.[31] This commenter also suggested that, if a Reverse Merger company is controlled by a non-U.S. person, the control person should be required to execute a consent to service of process in the U.S.[32]

IV. NYSE Amendment No. 2 and Response to Comments

In Amendment No. 2, NYSE proposed several changes to more effectively align its proposal with that of Nasdaq. NYSE amended its proposal to require that a Reverse Merger company ''maintain a closing stock price of $4 or higher for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to the filing of the initial listing application'' and prior to listing. In addition, NYSE amended the requirement that a Reverse Merger company provide all required reports to clarify that such reports must include ''all required'' audited financial statements.

Amendment No. 2 also proposes a new exception to the Reverse Merger rules and clarifies that all other listing requirements are applicable to all Reverse Merger companies, even those Reverse Merger companies that can take advantage of either of the two exceptions being proposed under the new rules. As noted above, as proposed, the rule provides that a Reverse Merger company would not be subject to the requirements of the rule if, in connection with the listing, it completes a firm commitment underwritten public offering where the proceeds to the company will be sufficient on a stand-alone basis to meet the aggregated market value of publicly-held shares requirement for Initial Firm Commitment Underwritten Public Offerings as set forth in Section 102.01B and the offering is occurring subsequent to or concurrently with the Reverse Merger.[33] Amendment No. 2 additionally proposes that the Reverse Merger company would not be subject to the requirement that it maintain a closing stock price of $4 or higher for at least 30 of the most recent 60 days prior to each of the filing of the initial listing application and the date of the Reverse Merger company's listing, if it has satisfied the one-year trading requirement and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing the required information.[34] The amended rule language states that a Reverse Merger company must comply with all applicable listing requirements. Applicable listing standards include, but are not limited to, the corporate governance requirements set forth in Section 303A of the Manual and the applicable distribution, stock price and market value requirements of Sections 102.01A, 102.01B and 303A of the Manual. In either case, the language makes clear that companies that fall under the exceptions must also comply with all other listing requirements.

Finally, NYSE made several technical changes in Amendment No. 2, including those to conform its language more closely to that of the Nasdaq proposal.

On November 7, 2011, NYSE responded to the comments received on the proposal.[35] One commenter expressed concern that the NYSE proposal might not provide investors with sufficient protections in relation to listed Reverse Merger companies and noted and welcomed the NYSE's ability to exercise its discretion to apply additional or more stringent criteria to a Reverse Merger company. In response, NYSE noted that the same discretion is included in the NYSE Amex proposal. The NYSE further noted that it does not believe that it is necessary at this time to adopt any additional general requirements for all companies that would be considered for listing under the proposed rules. The Exchange also stated that the proposed approach, in its belief, strikes an appropriate balance by providing discretionary authority to the Exchange to apply additional or more stringent criteria,[36] while also providing transparency as to the factors that would prompt the imposition of such criteria. NYSE believes that it is appropriate to apply those new requirements for a period of time, while closely monitoring the performance of Reverse Merger companies that list under the new rules. If at any time it becomes apparent that there are significant continuing investor protection or regulatory concerns associated with the listing of Reverse Merger companies, NYSE will consider the desirability of adopting additional more stringent requirements.

NYSE noted that the Commission received two negative comment letters in relation to the NYSE Amex filing.[37] Both commenters supported the proposed rule's exception for Reverse Merger companies listing in conjunction with an underwritten public offering, but argued that the transaction size requirement should either be eliminated from the proposal or set at a far lower level. The Exchange believes that the substantial offering size requirement provides a significant regulatory benefit. One of the commenters argued that the requirement that a Reverse Merger Company must trade in another market for at least a year prior to listing is unnecessary. As noted in the filing, significant regulatory concerns have arisen with respect to a number of reverse merger companies in recent times. NYSE believes that a ''seasoning'' period prior to listing should provide greater assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified. NYSE believes that the elimination of the one year trading requirement would significantly weaken the value of the seasoning period in that less scrutiny would generally be present. The other commenter argued that the rule should not apply to a Reverse Merger company which resulted from a merger between an operating company and a new shell company with no prior business operations. Based on the Exchange's experience with the listing of Reverse Merger companies, the Exchange believes that it is appropriate to apply the proposed rules to all Reverse Merger companies, regardless of whether the shell company into which the operating company merged had ever had any previous business operations.

[31] *See* Locke Lord Letter.

[32] *Id.*

[33] *See* note 12, *supra.*

[34] Amendment No. 2 also proposes that, to be eligible for this exception, such companies be required to (i) Comply with the stock price requirement of Section 102.01B of the Manual at the time of the filing of the initial listing application and the date of the Reverse Merger company's listing and (ii) not be delinquent in its filing obligations with the Commission.

[35] *See* Email from John Carey, Chief Counsel, NYSE Regulation Inc., to Sharon Lawson, Senior Special Counsel, Commission and David Michehl, Special Counsel, Commission dated November 7, 2011.

[36] *See supra,* note 11.

[37] The Commission notes that the two comment letters submitted on the NYSE Amex filing are substantially similar to two of the letters filed on the Nasdaq proposal. *See* Feldman Letter and Westpark Letter.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–38. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–38, and should be submitted on or before December 6, 2011.

VI. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 2, and finds that it is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange,[38] and, in particular, Section 6(b)(5) of the Act,[39] which, among other things, requires that the rules of a national securities exchange be 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.

The development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

NYSE proposed to make more rigorous its listing standards for Reverse Merger companies, given the significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to these companies. As noted above, Nasdaq and NYSE Amex filed similar proposals for the same reasons.[40] Among other things, the proposals seek to improve the reliability of the reported financial results of Reverse Merger companies by requiring a pre-listing ''seasoning period'' during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. The proposals also seek to address concerns that some might attempt to meet the minimum price test required for exchange listing through a quick manipulative scheme in the securities of a Reverse Merger company, by requiring that minimum price to be sustained for a meaningful period of time.

The Commission believes the proposed one-year seasoning requirement for Reverse Merger companies that seek to list on the Exchange is reasonably designed to address concerns that the potential for accounting fraud and other regulatory issues is more pronounced for this type of issuer. As discussed above, these additional listing requirements will assure that a Reverse Merger company has produced and filed with the Commission at least one full year of all required audited financial statements following the Reverse Merger transaction before it is eligible to list on NYSE. The Reverse Merger company also must have filed all required Commission reports since the consummation of the Reverse Merger, which should help assure that material information about the issuer have been filed with the Commission and that the issuer has a demonstrated track record of meeting its Commission filing and disclosure obligations. In addition, the requirement that the Reverse Merger company has traded for at least one year in the over-the-counter market or on another exchange could make it more likely that analysts have followed the company for a sufficient period of time to provide an additional check on the validity of the financial and other information made available to the public.

Although certain commenters expressed concern that the proposal might inhibit capital formation and access by small companies to the markets, the Commission notes that the enhanced listing standards apply only to the relatively small group of Reverse Merger companies—where there have been numerous instances of fraud and other violations of the federal securities laws—and merely requires those entities to wait until their first annual audited financial statements are produced before they become eligible to apply for listing on the Exchange. While fraud and other illegal activity may occur with other types of issuers, as noted by certain commenters, the Commission does not believe this should preclude NYSE from taking reasonable steps to address these concerns with Reverse Merger companies.

The Commission also believes the proposed requirement for a Reverse Merger company to maintain the specified minimum share price for a

[38] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

[40] *See* Securities Exchange Act Release No. 65633 (August 4, 2011), 76 FR 49513 (August 10, 2011) and Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522.

sustained period, and for at least 30 of the most recent 60 trading days, prior to the date of the initial listing application and the date of listing, is reasonably designed to address concerns that the potential for manipulation of the security to meet the minimum price requirements is more pronounced for this type of issuer. By requiring that minimum price to be maintained for a meaningful period of time, the proposal should make it more difficult for a manipulative scheme to be successfully used to meet the Exchange's minimum share price requirements.

In addition, the Commission believes that the proposed exceptions to the enhanced listing requirements for Reverse Merger companies that (1) Complete a substantial firm commitment underwritten public offering in connection with its listing,[41] or (2) have filed at least four annual reports containing all required audited financial statements with the Commission following the filing of all required information about the Reverse Merger transaction, and satisfying the one-year trading requirement, reasonably accommodate issuers that may present a lower risk of fraud or other illegal activity. The Commission believes it is reasonable for the Exchange to conclude that, although formed through a Reverse Merger, an issuer that (1) Undergoes the due diligence and vetting required in connection with a sizeable underwritten public offering, or (2) has prepared and filed with the Commission four years of all required audited financial statements following the Reverse Merger, presents less risk and warrants the same treatment as issuers that were not formed through a Reverse Merger. Nevertheless, the Commission expects the Exchange to monitor any issuers that qualify for these exceptions and, if fraud or other abuses are detected, to propose appropriate changes to its listing standards.

The Commission notes that certain commenters suggested the Exchange impose specific additional requirements on Reverse Merger companies that seek an exchange listing, such as the completion of an independent forensic diligence report on the issuer, the execution of a consent to service of process in the U.S. by foreign controlling persons, and additional more stringent standards in addition to the proposed seasoning period. Although there may be merit in these or other potential ways to enhance listing standards for Reverse Merger companies, the Commission believes that the additional listing standards proposed by the Exchange should help prevent fraud and manipulation, protect investors and the public interest, and are otherwise consistent with the Act.

The Commission also notes that several of the changes proposed by the Exchange in Amendment No. 2 were clarifying in nature and designed to make its proposal consistent with the proposals submitted by Nasdaq and NYSE Amex.

For the reasons discussed above, the Commission believes that NYSE's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, helping prevent fraud and manipulation associated with Reverse Merger companies, and protecting investors and the public interest.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[42] for approving the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register**. As noted above, the changes made in Amendment No. 2 harmonize the proposed rule change with similar proposals by Nasdaq and NYSE Amex that have been subject to public comment, in addition to providing clarifying language consistent with the intent of the original rule proposal. In addition, the Commission believes it is in the public interest for NYSE to begin applying its enhanced listing standards as soon as practicable, in light of the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

VII. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2011–38), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Kevin M. O'Neill,

Deputy Secretary.

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[41] The Commission notes that several commenters supported an exception for issuers with underwritten public offerings. *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65708; File No. SR–NASDAQ–2011–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, Adopting Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company

November 8, 2011.

I. Introduction

On May 26, 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 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt additional listing requirements for a company that has become an Act reporting company by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger'').[3] The proposed rule change was published for comment in the **Federal Register** on June 14, 2011.[4] On July 25, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved to September 12, 2011.[5] The Commission received two comment letters on the proposal.[6] On September 12, 2011, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that this proposed rule change replaced a previous proposed rule change filed by Nasdaq regarding additional listing standards for Reverse Merger companies, which had included an exception for a Reverse Merger company that was listing in connection with a substantial firm commitment, underwritten public offering. *See* Securities Exchange Act Release No. 64371 (April 29, 2011), 76 FR 25730 (May 5, 2011) (SR–NASDAQ–2011–056). Nasdaq withdrew SR–NASDAQ–2011–056 on May 26, 2011. The Commission received one comment letter on this previous proposal. *See* Letter from Paul Gillis, Visiting Professor of Accounting, Peking University dated May 3, 2011 (''Gillis Letter'').

[4] *See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (''Notice'').

[5] *See* Securities Exchange Act Release No. 64956 (July 25, 2011), 76 FR 45636 (July 29, 2011).

[6] *See* Letter from David Feldman, Partner, Richardson and Patel LLP dated August 20, 2011 (''Feldman Letter'') and Letter to Elizabeth M. Murphy, Secretary, Commission, from WestPark Capital, Inc. dated September 2, 2011 (''WestPark Letter'').

Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule change.[7] The Commission received three comments in connection with the proceedings to determine whether to disapprove the proposed rule change.[8] Nasdaq filed Amendment No. 1 to the proposed rule change on November 4, 2011.[9] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Original Proposal

The Exchange proposes to adopt additional listing requirements for companies that become public through a Reverse Merger,[10] to address significant regulatory concerns including accounting fraud allegation that have arisen with respect to Reverse Merger companies. In its filing, Nasdaq noted, among other things, that there have been widespread allegations of fraudulent behavior by Reverse Merger companies, leading to concerns that their financial statements cannot be relied upon.[11] Nasdaq also stated that it was aware of situations where it appeared that promoters and others intended to manipulate prices of Reverse Merger companies' securities higher to help meet Nasdaq's initial listing bid price requirement, and where companies have gifted stock to artificially satisfy Nasdaq's public holder listing requirement.[12] As a result of these concerns, Nasdaq believes certain ''seasoning'' requirements in connection with the listing of Reverse Merger companies are appropriate.

Specifically, as originally filed, Nasdaq proposed to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a foreign exchange, for at least six months following the filing of all required information about the Reverse Merger transaction, including audited financial statements, with the Commission. Further, Nasdaq proposed to require that the Reverse Merger company maintain a minimum of a $4 bid price on at least 30 of the 60 trading days immediately prior to submitting the listing application. Finally, under the proposed rule, Nasdaq would not approve any Reverse Merger company for listing unless the company has timely filed its two most recent financial reports with the Commission if it is a domestic issuer or comparable information if it is a foreign issuer.

III. Comment Summary

The Commission received five comment letters on the proposal.[13] Two of the commenters objected broadly to the proposed additional listing requirements for Reverse Merger companies,[14] while three commenters suggested discrete changes to the proposal.[15]

One commenter who objected broadly to the proposal expressed the view that it could have a ''chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital.'' [16] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning requirement, the commenter suggests Nasdaq review regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, the commenter recommends an exemption from the seasoning requirement for a company coming to the Exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggest it be eliminated.[17]

The other commenter that objected broadly to the proposal believed that the proposal would harm capital formation and hinder small companies' access to the capital markets.[18] The commenter expressed the view that no objective research or hard data has been published that supports the notion that Reverse Merger companies bear additional scrutiny, and that the Commission should not approve the proposal until an independent and comprehensive study concludes that (i) Exchange listed reverse merger companies tend to fail more often than IPO companies, thus necessitating the additional scrutiny, (ii) the proposed six to twelve month ''seasoning'' for reverse merger companies will indeed deter corporate frauds, and (iii) the exchanges do not already have sufficient rules in place to discourage corporate frauds in both reverse merger and IPO companies.[19] Based on its research, the

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[7] *See* Securities Exchange Act Release No. 65319 (September 12, 2011), 76 FR 57791 (September 16, 2011) (''Order Instituting Disapproval Proceedings''). Among other things, the Commission instituted disapproval proceedings to allow the Commission to consider the Nasdaq proposal together with proposals by NYSE and NYSE Amex to enhance their respective listing standards for Reverse Merger companies that differed in certain material respects from the Nasdaq proposal. *See* Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011) (SR–NYSE–2011–38) and Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522 (August 10, 2011) (SR–NYSEAmex–2011–55).

[8] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Locke Lord LLP dated October 17, 2011 (''Locke Lord Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from James N. Baxter, Chairman and General Counsel, New York Global Group dated October 17, 2011 (''New York Global Group Letter''); and Letter to Elizabeth M. Murphy, Secretary, Commission, from David A. Donohoe, Jr., Donohoe Advisory Associates LLC dated October 18, 2011 (''Donohoe Letter'').

[9] *See* Amendment No. 1, dated November 4, 2011. In Amendment No. 1, Nasdaq made several changes to the proposed rule change, some in response to the comment letters received. The changes proposed by Nasdaq include: (i) Lengthening the proposed seasoning period from six months to one year; (ii) including an exemption from the rule for firm commitment underwritten public offerings that meet a substantial size requirement; (iii) added a new exception from certain requirements contained in the rule for companies that conducted their reverse merger a substantial length of time before applying to list; (iv) applying the price requirement using closing prices, both prior to submission of the listing application and prior to listing, and for a sustained period of time; and (v) other additional changes to clarify the rule and harmonize it with a similar proposal by NYSE and NYSE Amex.

[10] For purposes of the Nasdaq proposal, Nasdaq would treat as a Reverse Merger any transaction whereby an operating company becomes an Act reporting company by combining, either directly or indirectly, with a shell company which is an Act reporting company whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company satisfying the requirements of IM–5101–2 (relating to companies whose business plan is to complete one or more acquisitions) or a business combination described in Rule 5110(a) (relating to a listed company that combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing, sometimes called a ''back-door listing''). A Reverse Merger would also not include a Substitution Listing Event, as defined in Rule 5005(a)(39) (proposed to be renumbered as Rule 5005(a)(40), such as the formation of a holding company to replace the listed company or a merger to facilitate a re-incorporation, because in these cases the operating company is already a listed entity.

[11] *See* Notice.

[12] *Id.*

[13] *See supra* notes 6 and 8. *See also,* note 3 (referencing the comment received on Nasdaq's previous proposal).

[14] *See* Feldman Letter and New York Global Group Letter.

[15] *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[16] *See* Feldman Letter.

[17] *Id.*

[18] *See* New York Global Group Letter.

[19] *Id.*

commenter believes that more Chinese companies have been delisted that have gone public through an IPO than through a Reverse Merger, and that they were delisted more than three years after they became public, which is well beyond the seasoning period proposed by Nasdaq.[20]

A third commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices or other inappropriate behavior on the part of companies, promoters and others.[21] The commenter, however, recommended that, in order to avoid unnecessary burdens on smaller capitalization issuers, the proposed rule change be modified to exclude Form 10 share exchange transactions from the reverse merger definition, or provide an exception for a reverse merger company listing in connection with a firm commitment underwritten public offering.[22] This commenter also recommended that Nasdaq consider requiring companies listing on the Exchange to engage a recognized independent diligence firm to conduct a forensic audit and issue a forensic diligence report prior to approval of the listing application.[23]

Another commenter, while it did not believe the Exchange had presented a sufficient rationale or data to support the need for a Reverse Merger seasoning period, agreed that a reasonable seasoning period for Reverse Merger companies could be beneficial, and was of the view that the six-month seasoning period proposed by Nasdaq was preferable to the one-year seasoning period proposed by NYSE and NYSE Amex.[24] The commenter also believed that Nasdaq's proposed requirement that a Reverse Merger company maintain the requisite stock price for at least 30 of the 60 trading days immediately preceding the filing of the listing application was lacking because, among other things, it would not apply to the period during which the listing application was under review.[25] In addition, this commenter expressed support for an underwritten public offering exception, regardless of size, from the proposed rule's additional listing requirement.[26]

A fifth commenter also expressed the view that there should be an exception where the securities issued in the Reverse Merger were registered with the Commission, so that the additional listing standards would be directed toward those transactions that have not been subjected to full Commission review.[27] This commenter also suggested that, if a Reverse Merger company is controlled by a non-U.S. person, the control person should be required to execute a consent to service of process in the U.S.[28]

IV. Nasdaq Amendment No. 1 and Response to Comments

In Amendment No. 1 Nasdaq made several modifications to the proposed rule change and responded to comments received on the proposal. Specifically, Nasdaq proposed to extend the trading period contemplated in the original filing from six months to one year and require that, prior to listing, the company timely file all required periodic financial reports for the prior year, including at least one annual report. Such annual report must contain audited financial statements for a full fiscal year following the filing of all required information about the reverse merger transaction. In Nasdaq's view, this would allow additional time for FINRA and other regulators to review trading patterns and uncover potentially manipulative trading. The amendment also seeks to clarify that, during the trading period, the foreign exchanges on which trading may take place must be ''regulated'' foreign exchanges.

In addition, Amendment No. 1 would supplement the proposed additional standard to maintain the minimum $4 price by requiring that it be maintained for ''a sustained period,'' as well for at least 30 of the most recent 60 trading days, and to apply that requirement to the date of listing, as well as to the date of the listing application. Nasdaq stated its belief that these changes would clarify its ability to consider a longer period of time for purposes of evaluating the minimum price requirement, if necessary in light of the security's trading volume, frequency of trading, and the trend of the company's stock price during the applicable periods.[29] Nasdaq also changed the $4 price reference from the bid price to the closing price.

Amendment No. 1 also includes two new exceptions from the proposed additional listing requirement for Reverse Merger companies. First, a Reverse Merger company completing a firm commitment underwritten public offering at, or about, the time of listing, where the gross proceeds to the company will be at least $40 million, would not be subject to the proposed additional listing requirements. Nasdaq noted that such an exception was supported by several of the commenters,[30] and would be consistent with the approach proposed by NYSE and NYSE Amex. Second, Nasdaq proposed an exception for a Reverse Merger company that has filed at least four annual reports with the Commission following the one year trading period. Nasdaq stated its belief that it is appropriate, after the passage of such a period of more than four years, to treat a company that became public through a Reverse Merger just like any other company.

Finally, Nasdaq proposed several technical changes in Amendment No. 1, including clarifying that a Reverse Merger is any transaction where an operating company becomes an ''Exchange Act reporting company'' (rather than a ''public company'' as in the original filing) by combining with a shell company which is an Act reporting company, and that this could occur ''directly or indirectly.'' [31]

In Amendment No. 1, Nasdaq noted that any Reverse Merger company must also meet all other applicable requirements for listing on Nasdaq.[32] In response to commenters that stated that problems frequently occur when companies go public through an IPO or other method, and that Reverse Mergers should not be singled out, Nasdaq did not believe that the existence of broader concerns should preclude it from taking more discrete steps to protect investors from potential abuses.[33] Nasdaq further

[20] *Id.*

[21] *See* WestPark Letter.

[22] *Id.*

[23] *Id.*

[24] *See* Donohoe Letter.

[25] *Id.*

[26] *Id.*

[27] *See* Locke Lord Letter.

[28] *Id.*

[29] Nasdaq also noted that the proposed minimum period was supported by the Donohoe Letter.

[30] *See, e.g.,* WestPark Letter; Donohoe Letter; and Feldman Letter. While these commenters indicated a preference for a smaller threshold for the exception, Nasdaq stated its belief that the proposed $40 million level is appropriate to protect investors and the public interest.

[31] Nasdaq also stated that this definition would include a company that engages in a ''Form 10 share exchange transaction.'' While the WestPark Letter suggested that such transactions should not be included, Nasdaq stated its belief that it is appropriate to impose the proposed additional requirements on such a transaction to allow review of the trading activity following the Reverse Merger.

[32] Nasdaq noted in Amendment No. 1 that these requirements include the corporate governance requirements contained in the Nasdaq Listing Rule 5600 Series, as well as the applicable quantitative and liquidity measures contained in the Rule 5300, 5400 and 5500 Series governing listing on the Nasdaq Global Select, Global, and Capital Markets, respectively.

[33] *See, e.g.,* WestPark Letter; Donohoe Letter; and New York Global Group Letter. Nasdaq stated that it does not agree with the view expressed by some of these commenters that it can adopt requirements applicable to Reverse Merger Companies only if it now also addresses those other types of companies.

Continued

stated that it would continue to review all applicants for potential public interest concerns. If Nasdaq observes problems with other types of companies, it may seek to adopt additional enhancements to its listing standards, or modify these proposed requirements, to address those problems.[34]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–073 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–2011–073. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–073, and should be submitted on or before December 6, 2011.

VI. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange,[35] and, in particular, Section 6(b)(5) of the Act,[36] which, among other things, requires that the rules of a national securities exchange be 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.

The development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

Nasdaq proposed to make more rigorous its listing standards for Reverse Merger companies, given the significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to these companies. As noted above, NYSE and NYSE Amex filed similar proposals for the same reasons.[37] Among other things, the proposals seek to improve the reliability of the reported financial results of Reverse Merger companies by requiring a pre-listing ''seasoning period'' during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. The proposals also seek to address concerns that some might attempt to meet the minimum price test required for exchange listing through a quick manipulative scheme in the securities of a Reverse Merger company, by requiring that minimum price to be sustained for a meaningful period of time.

The Commission believes the proposed one-year seasoning requirement for Reverse Merger companies that seek to list on the Exchange is reasonably designed to address concerns that the potential for accounting fraud and other regulatory issues is more pronounced for this type of issuer. As discussed above, these additional listing requirements will assure that a Reverse Merger company has produced and filed with the Commission at least one full year of audited financial statements following the Reverse Merger transaction before it is eligible to list on Nasdaq. The Reverse Merger company also must have timely filed all required Commission reports since the consummation of the Reverse Merger, which should help assure that material information about the issuer has been filed with the Commission and that the issuer has a demonstrated track record of meeting its Commission filing and disclosure obligations. In addition, the requirement that the Reverse Merger company have traded for at least one year in the over-the-counter market or on another exchange could make it more likely that analysts have followed the company for a sufficient period of time to provide an additional check on the

Rather, the Exchange believes that the proposed rule change is consistent with the Act in that it is designed to protect investors and the public interest from abuses that Nasdaq has observed in connection with Reverse Merger Companies.

[34] The Exchange noted that several of the commenters suggested additional enhancements or changes that go beyond the scope of this proposed rule change. For example, the Locke Lord Letter proposed a consent of service requirement for entities controlled by non-U.S. residents. The Exchange stated that it does not believe it is appropriate to include such a requirement in connection with this filing, as the concern identified is not unique to Reverse Merger companies and could involve any company controlled by non-U.S. residents. Moreover, the Exchange believes that such a requirement would be better considered by the Commission in connection with a review of the requirements to access the U.S. capital markets. Similarly, the Gillis Letter supported the proposed rule, but also suggested additional Commission rulemaking, which, Nasdaq stated, is beyond its ability to implement.

[35] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011) and Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522.

validity of the financial and other information made available to the public.

Although certain commenters expressed concern that the proposal might inhibit capital formation and access by small companies to the markets, the Commission notes that the enhanced listing standards apply only to the relatively small group of Reverse Merger companies—where there have been numerous instances of fraud and other violations of the federal securities laws—and merely requires those entities to wait until their first annual audited financial statements are produced before they become eligible to apply for listing on the Exchange. While fraud and other illegal activity may occur with other types of issuers, as noted by certain commenters, the Commission does not believe this should preclude Nasdaq from taking reasonable steps to address these concerns with Reverse Merger companies.

The Commission also believes the proposed requirement for a Reverse Merger company to maintain the specified minimum share price for a sustained period, and for at least 30 of the most recent 60 trading days, prior to the date of the initial listing application and the date of listing, is reasonably designed to address concerns that the potential for manipulation of the security to meet the minimum price requirements is more pronounced for this type of issuer. By requiring that minimum price to be maintained for a meaningful period of time, the proposal should make it more difficult for a manipulative scheme to be successfully used to meet the Exchange's minimum share price requirements.

In addition, the Commission believes that the proposed exceptions to the enhanced listing requirements for Reverse Merger companies that (1) Complete a substantial firm commitment underwritten public offering at or about the time of listing,[38] or (2) have filed at least four annual reports containing all required audited financial statements with the Commission following the filing of all required information about the Reverse Merger transaction, and satisfying the one-year trading requirement, reasonably accommodate issuers that may present a lower risk of fraud or other illegal activity. The Commission believes it is reasonable for the Exchange to conclude that, although formed through a Reverse Merger, an issuer that (1) Undergoes the due diligence and vetting required in connection with a sizeable underwritten public offering, or (2) has prepared and filed with the Commission four years of all required audited financial statements following the satisfaction of the one year trading requirement, presents less risk and warrants the same treatment as issuers that were not formed through a Reverse Merger. Nevertheless, the Commission expects the Exchange to monitor any issuers that qualify for these exceptions and, if fraud or other abuses are detected, to propose appropriate changes to its listing standards.

The Commission notes that certain commenters suggested the Exchange impose specific additional requirements on Reverse Merger companies that seek an exchange listing, such as the completion of an independent forensic diligence report on the issuer, or the execution of a consent to service of process in the U.S. by foreign controlling persons. Although there may be merit in these or other potential ways to enhance listing standards for Reverse Merger companies, the Commission believes that the additional listing standards proposed by the Exchange should help prevent fraud and manipulation, protect investors and the public interest, and are otherwise consistent with the Act.

The Commission also notes that several of the changes proposed by the Exchange in Amendment No. 1 were designed to make its proposal consistent with the proposals submitted by NYSE and NYSE Amex. As indicated in the Order Instituting Disapproval Proceedings, the Commission believes that it is important to assure that the Exchanges develop consistent and effective enhancements to their listing standards, to best address the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

For the reasons discussed above, the Commission believes that Nasdaq's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, helping prevent fraud and manipulation associated with Reverse Merger companies, and protecting investors and the public interest.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[39] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**. As noted above, the changes made in Amendment No. 1 harmonize the proposed rule change with similar proposals by NYSE and NYSE Amex that have been subject to public comment, in addition to providing clarifying language consistent with the intent of the original rule proposal. In addition, the Commission believes it is in the public interest for Nasdaq to begin applying its enhanced listing standards as soon as practicable, in light of the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

VII. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2011–073), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–29412 Filed 11–14–11; 8:45 am]

BILLING CODE 8011–01–P

[38] The Commission notes that several commenters supported an exception for issuers with underwritten public offerings. *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form—2, 3A, 3B and 3C

Title: Selective Service System Change of Information, Correction/Change Form and Registration Status Forms.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections submitted on SSS Form 1.

Burden: A burden of two minutes or less on the individual respondent.

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form

should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: October 4, 2011.

Lawrence G. Romo,

Director.

[FR Doc. 2011–29286 Filed 11–14–11; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12909 and #12910]

Virginia Disaster #VA–00037

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4042–DR), dated 11/04/2011.

Incident: Earthquake.

Incident Period: 08/23/2011 through 10/25/2011.

Effective Date: 11/04/2011.

Physical Loan Application Deadline Date: 01/03/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 08/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/04/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Louisa.

Contiguous Counties (Economic Injury Loans Only):

Virginia: Albemarle, Fluvanna, Goochland, Hanover, Orange, Spotsylvania.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 129092 and for economic injury is 129100.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–29444 Filed 11–14–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0091]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of upcoming panel teleconference meeting.

DATES: December 7, 2011, 12 p.m.–2 p.m. (EDT).

Call-in number: (866) 238–1665.

Leader/Host: Leola S. Brooks.

SUPPLEMENTARY INFORMATION:

Type of meeting: The teleconference meeting is open to the public.

Purpose: The Occupational Information Development Advisory Panel (panel) is a discretionary panel, established under the Federal Advisory Committee Act of 1972, as amended. The panel provides independent advice and recommendations to us on the creation of an occupational information system for use in our disability programs and for our adjudicative needs. We require advice on the research design of the Occupational Information System, including the development and testing of a content model and taxonomy, work analysis instrumentation, sampling, and data collection and analysis.

Agenda: The Designated Federal Officer will post the meeting agenda on the Internet at *http://www.ssa.gov/oidap/meeting_information.htm* at least one week prior to the start date. You can also receive a copy electronically by email or by fax, upon request. We retain copies of all proceedings, available for public inspection by appointment at the panel's office.

The panel will not hear public comment during this teleconference meeting.

Contact Information: Anyone requiring information regarding the panel should contact the staff by: Mail addressed to the Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, Robert M. Ball Federal Building, 3–E–26, Baltimore, MD 21235–6401, fax to (410) 597–0825, or Email to *OIDAP@ssa.gov.*

Leola S. Brooks,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2011–29438 Filed 11–14–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7684]

30-Day Notice of Proposed Information Collection: DS–7656; Affidavit of Relationship (AOR)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Affidavit of Relationship (AOR).
- OMB Control Number: None.
- Type of Request: New Collection.
- Originating Office: Office of Admissions, Bureau of Population, Refugees and Migration (PRM/A).
- Form Number: DS–7656.
- Respondents: Persons admitted to the United States as refugees or granted asylum in the United States requesting that their spouses, unmarried children under age 21, and/or parents, be considered for admission to the U.S. as refugees.

• Estimated Number of Respondents: 3,500 annually.
• Estimated Number of Responses: 3,500.
• Average Hours per Response: 1 hour (60 minutes).
• Total Estimated Burden: 3,500 annual hours.
• Frequency: On occasion.
• Obligation to Respond: Required to obtain or retain a benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 15, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:
• Email: *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
• Fax: (202) 395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Sumitra Siram, Office of Admissions, Bureau of Population, Refugees and Migration (PRM), PRM/Admissions, 2401 E Street NW., Suite L505, SA–1 Washington, DC 20522, who may be reached on (202) 453–9250 or at *SiramS@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary to properly perform our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond,

Abstract of Proposed Collection

The Affidavit of Relationship (AOR) is required by the Department of State to establish qualifications for access to the Priority 3—Family Reunification category of the United States Refugee Admissions Program (USRAP)—by persons of certain nationalities of special humanitarian concern who are family members of qualifying ''anchors'' (persons already admitted to the U.S. as refugees or granted asylum, including persons who may now be lawful permanent residents or U.S. citizens). Qualifying family members of U.S.-based anchors include spouses, unmarried children under age 21, and parents. Eligible nationalities are selected following careful review of several factors, including the United Nations High Commissioner for Refugees' annual assessment of refugees in need of resettlement, prospective or ongoing repatriation efforts, and U.S. foreign policy interests. The Priority 3 category is outlined in the annual Proposed Refugee Admissions—Report to Congress, which is submitted on behalf of the President in fulfillment of the requirements of Section 207(e)(1)–(7) of the Immigration and Nationality Act, and authorized by the annual Presidential Determination for Refugee Admissions.

Methodology

Information for the Affidavit of Relationship (AOR) is collected in person by Voluntary Agencies around the United States, which are organizations that work under cooperative agreements with the Department of State, to provide a means for current or former refugees and asylees to claim a relationship with certain family members that would qualify those family members to apply for access to refugee processing under the Priority 3 category of the U.S. Refugee Admissions Program. The Voluntary Agencies then forward the completed AORs to the Department of State's Refugee Processing Center (RPC) for data entry and case processing.

Dated: November 8, 2011.

Kelly A. Gauger,

Deputy Director, Office of Admissions, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2011–29472 Filed 11–14–11; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 7686]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Renaissance Portrait From Donatello to Bellini''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''The Renaissance Portrait from Donatello to Bellini,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about December 19, 2011, until on or about March 18, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 8, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–29473 Filed 11–14–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7685]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice; Notice of Correction.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR parts 120 to 130) on persons convicted of violating or attempting to violate Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778). Further, a public notice was published in the **Federal Register** on Tuesday, November 2, 1993, listing persons statutorily debarred pursuant to the ITAR; this notice makes one correction to that notice.

DATES: *Effective Date:* The effective date is the date of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, Director, Office of Defense Trade Controls Compliance, Bureau of

Political-Military Affairs, Department of State (202) 632–2798.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. Export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of this notice (Name; Date of Conviction; District; Case No.; Month/Year of Birth):

(1) Heriberto Alanis-Ortiz; September 11, 2010; U.S. District Court, Southern District of Texas; Case No. 7:10CR00178–S1–001; January 1978.

(2) Amen Ahmed Ali, (aka Ali Amen Alrowhani, Amin Al Rohany, Ameen Alrohany); January 18, 2011; U.S. District Court, Eastern District of California; Case No. 1:06CR00292–001; June 1950.

(3) Rogelio Barajas; February 15, 2011; U.S. District Court, Northern District of Illinois; Case No. 09–CR–1058; August 1967.

(4) Brian William Barthrop; December 22, 2010; U.S. District Court, District of Arizona; Case No. CR–09–00731–001–TUC–RRC (CRP); October 1946.

(5) Jesse Ivan Cantu; March 15, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR01201–002; December 1986.

(6) Charles Carper; October 20, 2010; U.S. District Court, District of Hawaii; Case No. 1:08CR00655–002; May 1986.

(7) Isaac Cervantes-Sanchez; February 24, 2011; U.S. District Court, Southern District of Texas; Case No. 7:10CR01331–S1–001; March 1981.

(8) Chitron Electronics, Inc.; February 9, 2011; U.S. District Court, District of Massachusetts; Case No. 1:08–CR–10386–004–PBS .

(9) Lawrence Davis (aka Larry Davis); April 23, 2009; U.S. District Court, Southern District of New York; Case No. 1:07–CR–1023–01(LAK); July 1945.

(10) Gwendolyn Douglas (aka Gwen Douglas); April 14, 2009; U.S. District Court, Southern District of New York; Case No. 07CR–1006; March 1955.

(11) Cesar Augusto Flores-Demara; February 14, 2011; U.S. District Court, District of Arizona; Case No. CR–10–01581–001–TUC–DCB(CRP); February 1974.

(12) Ernesto Gonzalez-Reyes; October 4, 2010; U.S. District Court, Southern District of Texas; Case No. 7:10CR00440–001; August 1961.

(13) Mythili Gopal; August 18, 2008; U.S. District Court, District of the District of Columbia; Case No. CR 07–0292–01; June 1970.

(14) Noshir S. Gowadia; February 4, 2011; U.S. District Court, District of Hawaii; Case No. 1:05CR00486–001; April 1944.

(15) Raul Gutierrez-Marroquin; February 17, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR01201–001; May 1988.

(16) Fidel Jesus Hernandez; November 23, 2010; U.S. District Court, District of Arizona; Case No. CR–07–02111–002–TUC–DCB(CRP); February 1973.

(17) Boniface Ibe; July 12, 2011; U.S. District Court, District of Maryland; Case No. DKC–8–11–CR–00097–001; June 1961.

(18) Gong Kim; January 25, 2011; U.S. District Court, District of Oregon; Case No. CR–10–25–01–HA; August 1971.

(19) Mark Komoroski; July 29, 2010; U.S. District Court, Middle District of Pennsylvania; Case No. 3:CR08–228; July 1962.

(20) Chi Tong Kuok, (aka Edison Kuok, Eddy Kuok, James Kuok, Yoko Chong, Yoko Kawasaki); September 16, 2010; U.S. District Court, Southern District of California; Case No. 09CR2581–BEN; March 1967.

(21) Jose Lara; January 27, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR00698–001; October 1983.

(22) Gregorio Larios, Jr.; March 17, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR00742–001; November 1980.

(23) Sergio Rafael Lopez-Medina; March 15, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR00699–002; August 1990.

(24) Xiaodong Sheldon Meng; June 24, 2008; U.S. District Court, Northern District of California; Case No. CR–04–20216–001–JF; January 1964.

(25) Chanoch Miller; January 7, 2011; U.S. District Court, Southern District of Florida; Case No. 0:10CR60177–COHN–2; December 1956.

(26) Jose Jesus Miramontes-Duarte; April 23, 2011; U.S. District Court, Southern District of Texas; Case No. 7:09CR00339–002; May 1951.

(27) Abraham Molina-Barron; May 13, 2011; U.S. District Court, District of Arizona; Case No. CR–10–02778–001–TUC–CKJ(HCE); December 1972.

(28) Jacques Monsieur; October 1, 2010; U.S. District Court, Southern

District of Alabama; Case No. 09–00186–001–WS; March 1953.

(29) George Frank Myles Jr. (aka George Miles); November 10, 2008; U.S. District Court, Southern District of Florida; Case No. 07–20930–CR–UNGARO; September 1948.

(30) Emenike Charles Nwankwoala; January 6, 2011; U.S. District Court, District of Maryland; Case No. PJM–8–10–CR–00179–001; October 1960.

(31) Andrew V. O'Donnell; August 1, 2011; U.S. District Court, Northern District of Georgia; Case No. 1:10–CR–491–CAP; July 1997.

(32) Joseph O'Toole; December 14, 2010; U.S. District Court, Southern District of Florida; Case No. 0:10CR60177–COHN–1; May 1931.

(33) Sergio Perez-Contreras; August 2, 2011; U.S. District Court, Southern District of Texas; Case No. 7:09CR00339–001; March 1938

(34) Julio Cesar Ramirez; June 30, 2011; U.S. District Court, Southern District of Texas; Case No. 7:11CR00288–001; July 1989.

(35) Julio Salazar-Galan; October 22, 2010; U.S. District Court, Southern District of Texas; Case No. 1:10CR00400–001; July 1990.

(36) Juan Sauceda-Rangel; May 23, 2011; U.S. District Court, Southern District of Texas; Case No. 7:10CR01794–001; May 1981.

(37) Christian Sepulveda-Ortiz; December 17, 2010; U.S. District Court, District of Arizona; Case No. CR–10–02111–001–TUC–CKJ(DTF); June 1983.

(38) Parthasarathy Sudarshan; June 17, 2008; U.S. District Court, District of the District of Columbia; Case No. CR 08–0037; June 1960.

(39) Paul Taylor; March 18, 2011; U.S. District Court, District of Delaware; Case No. 09CR121–LPS; August 1966.

(40) Alain Teran; January 13, 2011; U.S. District Court, Southern District of Texas; Case No. 1:10CR00699–001; June 1986.

(41) Eduardo Torres; November 4, 2010; U.S. District Court, Southern District of Texas; Case No. 1:10CR00330–001; August 1980.

(42) Andrei Antonio Torres-Vasquez; November 15, 2010; U.S. District Court, Southern District of Texas; Case No. 7:10CR01111–001; December 1985.

(43) Stephanie Monique Townsend; August 24, 2010; U.S. District Court, Southern District of California; Case No. 09CR4271–MMA; January 1989.

(44) Rolando Trevino; June 10, 2011; U.S. District Court, Southern District of Texas; Case No. 7:10CR01793–001; August 1987.

(45) Universal Industries Limited, Inc.; August 22, 2011; U.S. District Court, Southern District of Florida; Case No. 9:11–80058–CR–MARRA–2.

(46) Yufeng Wei (aka Annie Wei); February 4, 2011; U.S. District Court, District of Massachusetts; Case No. 1:08–CR–10386–002–PBS; April 1964.

(47) Zhen Zhou Wu (aka Alex Wu); January 27, 2011; U.S. District Court, District of Massachusetts; Case No. 1:08–CR–10386–001–PBS; March 1964.

As noted above, at the end of the three-year period following the date of this notice, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.,* sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit there from or have a direct or indirect interest therein.

Further, **Federal Register** document 93–26888, published at 58 FR 58586, Tuesday, November 2, 1993, is corrected on page 58586, line 50 through line 57 to read as follows:

1. Tsutomu Iida, 333 8th Maloka-Cho Totsuka-Ku, Kokohama, Japan, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), December 17, 1992, *United States* v. *Japan Aviation Electronics Industry, Ltd., et al.,* U.S. District Court, District of Columbia, Criminal Docket No. 91–516–10.

That notice of statutory debarment incorrectly identified the debarred party as ''Tsotomu Ida.''

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: November 8, 2011.

Andrew J. Shapiro,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2011–29470 Filed 11–14–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In October 2011, there were six applications approved. This notice also includes information on one application, approved in September 2011, inadvertently left off the September 2011 notice. Additionally, 14 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Orlando, Florida.

Application Number: 11–14–C–00–MCO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $26,952,400.

Earliest Charge Effective Date: February 1, 2026.

Estimated Charge Expiration Date: June 1, 2026.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use:

Emergency electrical system improvements: Landside phase 2 and airside terminal 4 phase 1 (design and construction).

Enplane road structural improvements (design and construction).

Landside signage improvements (design and construction).

Taxiway B–2 extension and taxiway B–1 rehabilitation (design and construction).

Elevator and escalator safety code compliance improvements (design and construction).

Runway 18U36R structural joint rehabilitation.

Closed circuit television improvements (design and construction).

Brief Description of Projects Partially Approved For Collection and Use:

Emergency radio dispatch system upgrade.

Determination: The emergency radio dispatch system is used for both eligible (aircraft rescue and firefighting and aviation security) and ineligible (normal law enforcement activities and medical emergencies) purposes. The PFC approval was limited to the cost associated with the eligible activities.

Airside 4 hub mechanical system improvements (design and construction).

Determination: That portion of the mechanical systems serving concessions and other non-public areas of the terminal was found to be ineligible.

Decision Date: September 28, 2011.

For Further Information Contact: Susan Moore, Orlando Airports District Office, (407) 812–6331.

Public Agency: City of Augusta, Georgia.

Application Number: 11–03–C–00–AGS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,091,034.

Earliest Charge Effective Date: September 1, 2026.

Estimated Charge Expiration Date: November 1, 2027.

Class of Air Carriers Not Required to Collect PFC's: Air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Augusta Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 17/35 rehabilitation.

General aviation terminal parking lot.

Decision Date: October 6, 2011.

For Further Information Contact: Anna Guss, Atlanta Airports district Office, (404) 305–7146.

Public Agency: County of Broome, Johnson City, New York.

Application Number: 11–15–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $298,884.

Earliest Charge Effective Date: December 1, 2015.

Estimated Charge Expiration Date: September 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

Brief Description of Projects Approved For Collection and Use:

Replacement of aircraft rescue and firefighting gear.

Snow removal equipment purchase.

PFC administrative costs (2012–2016).

Airport master plan phase III.

West apron rehabilitation design.

West apron rehabilitation construction.

Purchase of portable Americans with Disabilities Act compliant passenger boarding ramp.

Decision Date: October 17, 2011.

For Further Information Contact: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: City of Atlanta, Georgia.

Application Number: 11–13–C–00–ATL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $171,840,875.

Earliest Charge Effective Date: March 1, 2023.

Estimated Charge Expiration Date: April 1, 2024.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, and non-stop sight seeing flights, that begin and end at the airport and are concluded within a 25-mile radius of the airport.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hartsfield-Jackson Atlanta International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Supplemental windcones relocation and directional signage.

Common use baggage handling system.

T-north optimization and expansion—phases I and II.

Deicing system upgrades.

Airfield pavement replacement 2011–2016.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

A380 airfield modifications.

A380 terminal modifications.

Land acquisition for airport expansion east.

Airfield lighting vaults emissions reduction modifications.

Airport sustainability plan.

Terminal upgrades—concourse D.

Airport master plan update.

Decision Date: October 19, 2011.

For Further Information Contact: Anna Guss, Atlanta Airports District Office, (404) 305–7146.

Public Agency: City of Billings, Montana.

Application Number: 12–07–C–00–BIL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $2,020,000.

Earliest Charge Effective Date: December 1, 2011.

Estimated Charge Expiration Date: October 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use:

Snow removal equipment replacement.

Terminal security lobby expansion.

Update airport storm water system plan.

Airfield storm water detention improvements.

Decision Date: October 20, 2011.

For Further Information Contact: Dave Stelling, Helena Airports District Office, (406) 449–5257.

Public Agency: Port of Seattle, Seattle, Washington.

Application Number: 11–07–C–00–SEA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $155,720,118.

Earliest Charge Effective Date: January 1, 2027.

Estimated Charge Expiration Date: November 1, 2028.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved For Collection and Use at a $4.50 PFC Level: In-line baggage system.

Decision Date: October 21, 2011.

For Further Information Contact: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: County of Oneida and City of Rhinelander, Rhinelander, Wisconsin.

Application Number: 12–12–C–00–RHI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $35,135.

Earliest Charge Effective Date: December 1, 2011.

Estimated Charge Expiration Date: June 1, 2012.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Rhinelander/Oneida County Airport.

Brief Description of Projects Approved for Collection and Use:

Update master plan.
Electrical vault remodel.
Design taxiway A, Al, A3, B and D reconstruction.
Airfield pavement plus incursion markings.
Wind cone lighting upgrade.
Rehabilitate taxiways.
PFC administration.

Decision Date: October 24, 2011.

For Further Information Contact: Daniel Millenacker, Minneapolis Airports District Office, (612) 713–4359.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amended approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
05–10–C–09–MCO, Orlando, FL	09/27/11	$745,803,511	$749,303,511	12/01/19	12/01/19
06–06–C–02–GRK, Killeen, TX	09/28/11	2,780,476	2,494,772	01/01/10	01/01/10
09–13–C–01–MCO, Orlando, FL	09/29/11	227,788,000	227,788,000	02/01/26	02/01/26
09–01–C–01–CHS, Charleston, SC	09/29/11	7,933,920	14,833,920	12/01/11	06/01/13
07–02–C–01–NYL, Yuma, AZ	09/30/11	1,155,674	1,455,674	01/01/13	01/01/14
01–03–C–01–LWS, Lewiston, ID	10/05/11	1,171,746	1,300,088	07/01/16	02/01/12
08–04–C–01–RST, Rochester, MN	10/07/11	1,555,114	1,319,101	01/01/11	07/01/10
08–14–C–02–MKE, Milwaukee, WI	10/07/11	16,860,334	19,730,334	08/01/20	11/01/20
11–07–C–01–PUW, Pullman, WA	10/11/11	101,950	210,700	03/01/12	11/01/12
00–03–C–03–CSG, Columbus, GA	10/12/11	864,065	876,138	11/01/06	11/01/06
05–02–C–02–ANC, Anchorage, AK	10/14/11	25,000,000	85,000,000	07/01/15	12/01/26
11–07–C–01–LFT, Lafayette, LA	10/21/11	1,000,000	1,965,000	05/01/14	05/01/15
94–01–C–06–1SP, Ronkonkoma, NY	10/26/11	21,865,831	22,382,626	07/01/04	07/01/04
96–02–C–02–ISP, Ronkonkoma, NY	10/26/11	4,059,528	4,497,958	03/01/05	03/01/05

Issued in Washington, DC on November 3, 2011.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2011–29275 Filed 11–14–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 2011, there were four applications approved. This notice also includes information on three applications, approved in August 2011, inadvertently left off the August 2011 notice. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

Application Number: 11–17–C–00–BNA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $2,500,000.

Earliest Charge Effective Date: January 1, 2017.

Estimated Charge Expiration Date: March 1, 2017.

Class of Air Carriers Not Required To Collect PFC's:

Air taxi operators that have less than one percent of passenger boardings, enplane less than 25,000 passengers per year, and/or provide unscheduled service at Nashville International Airport (BNA).

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at BNA.

Brief Description of Projects Approved for Collection and Use:

Reconstruct taxiway Kilo.
Light emitting diode taxiway lighting upgrade 2L.
Pavement condition index airfield inspection.

Brief Description of Withdrawn Projects:

Safety management study.

Date of withdrawal: May 20, 2011.

Disparity study.

Date of withdrawal: August 23, 2011.

Decision Date: August 24, 2011.

For Further Information Contact: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

Public Agency: Reno-Tahoe Airport Authority, Reno, Nevada.

Application Number: 11–11–C–00–RNO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $25,491,376.

Earliest Charge Effective Date: October 1, 2013.

Estimated Charge Expiration Date: April 1, 2017.

Classes of Air Carriers Not Required To Collect PFC's:

(1) Nonscheduled/on demand air carriers filing FAA Form 1800–31; (2) commuter or small certificated air carriers filing Department of Transportation (DOT) Form T–100; and (3) foreign air carriers filing DOT Form T–100(f).

Determination: Approved. Based on information contained in the public

agency's application, the FAA has determined that each of the approved classes accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Centralized security checkpoint.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Snow removal equipment building.

Sand storage building.

Central disposal facility upgrade.

Brief Description of Projects Partially Approved for Collection and Use at a $3.00 PFC Level: Geographical information system.

Determination: Partially approved. Certain project components were determined to be ineligible.

Taxiway C extension.

Determination: Partially approved. The public agency requested that the project be funded only with PFC revenue in the PFC application and later submitted an application for an Airport Improvement Program (AIP) grant to partially fund the same project. Therefore, the approved FAA amount was limited to that portion of the cost not included in the AIP grant application.

Decision Date: August 29, 2011.

For Further Information Contact: Gretchen Kelly, San Francisco Airports District Office, (650) 876–2778, extension 623.

Public Agency: City of Chicago, Illinois.

Application Number: 11–25–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $90,787,103.

Earliest Charge Effective Date: February 1, 2038.

Estimated Charge Expiration Date: December 1, 2038.

Class of Air Carriers Not Required To Collect PFC's: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Development of non-exclusive use gates and related terminal facilities.

Renovation of concourse L terminal facilities.

Reimbursement for prior development of common use gate and related terminal facilities in concourse E.

Decision Date: August 31, 2011.

For Further Information Contact: Amy Hanson, Chicago Airports District Office, (847) 294–7354.

Public Agency: City of Durango and County of La Plata, Durango, Colorado.

Application Number: 11–07–C–00–DRO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $953,500.

Earliest Charge Effective Date: November 1, 2011.

Estimated Charge Expiration Date: August 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Replace security access control system.

Replace runway weather information system, runway 3/21.

Rehabilitate commercial parking apron.

Conduct wildlife hazard assessment.

Rehabilitate taxiway A from A5 to and including A6.

Purchase snow removal equipment carrier vehicle.

Brief Description of Disapproved Project: Terminal seating.

Determination: Disapproved. This project is ineligible as a stand-alone project.

Decision Date: September 1, 2011.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Roanoke Regional Airport Commission, Roanoke, Virginia.

Application Number: 11–04–C–00–ROA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $4,279,550.

Earliest Charge Effective Date: January 1, 2013.

Estimated Charge Expiration Date: March 1, 2016.

Classes of Air Carriers Not Required to Collect PFC's:

(1) Air carriers operating under Part 135 or Part 298 on an on-demand, nonscheduled, whole plane charter basis; and (2) air taxi/air charter operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Roanoke Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Remove obstructions in runway protection zone, runway 6.

Upgrade/expand terminal electrical and communication systems.

Upgrade terminal heating, ventilation, and air conditioning system and cooling tower.

Replace flight information display and intercom systems.

Replace terminal fire alarm system.

Demolition of building no. 7 for general aviation development.

Retrofit three jet bridges for regional jet adaptors.

Replace terminal roof—phase 1.

Install security improvements and barricades.

Modify screening checkpoint for additional portal.

Acquire land for runway protection zone, runway 6.

Conduct wildlife hazard study.

PEG program formulation.

Annual PFC administrative costs.

Decision Date: September 6, 2011.

For Further Information Contact: Jeffery Breeden, Washington Airports District Office, (703) 661–1363.

Public Agency: County of Milwaukee, Milwaukee, Wisconsin.

Application Number: 11–16–C–00–MKE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PEG Revenue Approved in This Decision: $28,971,429.

Earliest Charge Effective Date: August 1, 2022.

Estimated Charge Expiration Date: January 1, 2024.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport.

Brief Description of Projects Approved for Collection and Use:

Noise barrier study.

Concourse E ground power and preconditioned air units.

Perimeter and aircraft rescue and firefighting road reconfiguration, construction.

Runways 1U19R and 7R/25L intersection repaving, construction.

Perimeter road bridge over Howell Avenue, design.

Inline baggage security, construction.

Gate D56 improvements, design and construction.

Snow removal equipment.

Redundant main electrical service feed, design.
Terminal roadway signage, design.
PFC administrative costs.

Brief Description of Withdrawn Project:

Ramp electrification design.

Date of Withdrawal: May 9, 2011.

Decision Date: September 8, 2011.

For Further Information Contact: Sandy DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City of Charlotte, North Carolina.

Application Number: 11–04–C–00–CLT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $164,302,133.

Earliest Charge Effective Date: July 1, 2020.

Estimated Charge Expiration Date: August 1, 2023.

Class of Air Carriers Not Required To Collect PFCs:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Charlotte Douglas International Airport.

Brief Description of Projects Approved for Collection and Use:

Taxiway fixtures.
Rehabilitation of runway 18C/36C, design and construction.
Flight tracking system.
Access road, west aircraft rescue and firefighting building.
2008 Part 150 update.
Taxiway D extension.
Aircraft rescue and firefighting trucks.
New baggage screening system, design and construction.
Pre-conditioned air systems, concourse D.
Concourse E expansion.
Project management services.
East terminal expansion.
New upper level roadway, design and construction.
PFC application development.

Brief Description of Disapproved Project:

Aircraft deicing truck, replacement cab.

Determination: Disapproved. This project is not PFC eligible.

Decision Date: September 15, 2011.

For Further Information Contact: John Marshall, Atlanta Airports District Office, (404) 305–7153.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amended approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
08–08–C–02–EAT, East Wenatchee, WA	08/26/11	$366,393	$306,593	10/01/09	10/01/09
99–01–C–03–AGS, Augusta, GA	08/30/11	31,482,000	27,636,360	07/01/30	08/01/24
98–04–C–07–SEA, Seattle, WA	08/30/11	963,656,707	1,642,074,742	09/01/18	01/01/27
06–04–C–01–GTR, Columbus, MS	09/01/11	125,000	79,148	10/01/09	10/01/09
06–05–C–02–CLL, College Station, TX	09/06/11	755,492	787,528	04/01/09	04/01/09
00–02–C–04–MFE, McAllen, TX	09/13/11	2,647,000	2,586,204	05/01/07	05/01/07
07–07–C–03–ALO, Waterloo, IA	09/19/11	299,977	301,232	12/01/10	12/01/10
05–04–C–01–SAN, San Diego, CA	09/20/11	110,064,569	44,822,518	04/01/09	04/01/09
06–09–C–01–RNO, Reno, NV	09/20/11	3,400,000	3,066,408	12/01/07	12/01/07
98–03–C–01–RDG, Reading, PA	09/23/11	1,300,000	614,622	07/01/08	07/01/08
11–17–C–01–BNA, Nashville, TN	09/26/11	2,500,000	2,512,500	03/01/17	03/01/17

Issued in Washington, DC, on November 3, 2011.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2011–29276 Filed 11–14–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before November 30, 2011.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACTS: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 3, 2011.

Donald Burger,

Chief, General Approvals and Permits.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11526–M	.....	Linde Gas North America LLC Bear, DE.	49 CFR 180.209	To modify the special permit to authorize ultrasonic examination of certain steel cylinders.
12399–M	.....	Linde Gas North America LLC Murray Hill, NJ.	49 CFR 180.209	To modify the special permit to authorize ultrasonic examination of certain aluminum cylinders.
12706–M	.....	RAGASCO AS Raufoss, NO.	49 CFR 173.34; 173.201; 173.301; 173.304.	To modify the special permit to authorize an alternative test and inspection procedure.
13350–M	.....	National Aeronautics & Space Administration (NASA) Washington, DC.	49 CFR 173.201	To modify the special permit to authorize additional transportation locations.
14509–M	.....	Pacific Consolidated Industries, LLC Riverside, CA.	49 CFR 173.302 (a)(1), 173.304a (a)(1), 175.3.	To modify the special permit to authorize the transportation of cylinders containing oxidizing gases without a rigid outer packaging capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test
14574–M	.....	KMG Electronic Chemicals Houston, TX.	49 CFR 180.407(c), (e) and (f).	To modify the special permit to authorize additional Class 8 hazardous materials and to add 19 new cargo tanks.
14728–M	.....	International Isotopes Inc. Idaho Falls, ID.	49 CFR 173.416(c)	To modify the special permit to authorize an increase in the number of times the packaging can be used.
14977–M	.....	REC Advanced Silicon Materials LLC Silver Bow, MT.	49 CFR 173.301(f)	To modify the special permit to authorize the transportation in commerce of certain DOT Specification cylinders and ton containers containing Silane without pressure relief devices.
15036–M	.....	UTLX Manufacturing, Incorporated Alexandria, LA.	49 CFR 173.31(e) (2)(ii), 173.244 (a)(2), 173.314, 179.100, 179.101, 179.102–3, 179.15(b) and 179.16.	To modify the special permit to authorize the manufacture, marking, sale and use of three additional non-DOT specification tank cars for transportation of chlorine and certain other materials toxic by inhalation.

[FR Doc. 2011–28983 Filed 11–14–11; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 15, 2011.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 3, 2011.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
15476–N		Swanson Group Aviation, LLC Grants Pass, OR.	49 CFR 172.101 Column (9B), 172.204 (c)(3), 173.27 (b)(2), 175.30 (a)(1), and 172.200.	To authorize the transportation in commerce of certain hazardous materials by external load on cargo aircraft in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15479–N		Korean Air Lines Co. Ltd. (KAL).	49 CFR 172.101 Column (9B).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
15483–N		United Space Alliance Houston, TX.	49 CFR 173.302a	To authorize the transportation in commerce of certain Division 2.2 compressed gases in non-DOT specification cylinders to support the International Space Station Human Research Facility Gas Delivery System. (modes 1, 2, 3, 4, 5)
15491–N		Metalcraft/Sea-Fire Marine Inc. Baltimore, MD.	49 CFR 173.301(f)	To authorize the transportation in commerce of non-DOT specification cylinders containing a Division 2.2 compressed gas for export only. (modes 1, 2, 3, 4)
15493–N	.....	Carleton Technologies dba Cobham Mission Systems Orchard Park, NY.	49 CFR 173.302a	To authorize the manufacture, marking, sale and use of a nonrefillable non-DOT specification cylinder similar to a DOT specification 39 cylinder for use in transporting Division 2.2 non-flammable compressed gas. (modes 1, 2, 4, 5)
15494–N	.....	Johnson Controls Battery Group, Inc. Milwaukee, WI.	49 CFR 173.159	To authorize the transportation in commerce of certain actively leaking lead acid batteries in a special overpack by motor vehicle. (mode 1)

[FR Doc. 2011–28984 Filed 11–14–11; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed new system of records entitled ''Treasury/IRS 37.111—Preparer Tax Identification Number Records.''

DATES: Comments must be received no later than December 15, 2011. This new system of records will be effective December 20, 2011 unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Comments will be available for inspection and copying in the Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave., NW., Washington, DC 20224. Phone: (202) 927–6428 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Return Preparer Review initiative represents a big step toward meeting the IRS strategic plan goals of increasing taxpayer compliance and ensuring uniform and high ethical standards of conduct for paid tax return preparers. The major components of the program include requiring paid tax return preparers to register with the IRS and obtain a preparer tax identification number (PTIN), requiring competency measurements (by testing or through other professional licensing) for paid tax return preparers, requiring continuing professional education for paid tax return preparers, extending the ethical rules found in Treasury Department Circular 230 to all paid tax return preparers, assessing the quality of return preparation and performing tax compliance checks and suitability checks on paid tax return preparers, and developing a publicly accessible and searchable database of paid tax return preparers who have registered and been issued a PTIN.

The proposed system will maintain administrative records pertaining to the issuance of PTINs to registered paid tax return preparers. This registration program will allow the IRS to better serve the public by requiring paid tax return preparers to register with the IRS, and to obtain and regularly renew their preparer tax identification number (PTIN). Paid tax return preparers may be subject to suitability checks, including background, fingerprint, and tax compliance checks, and to ethics and other regulatory rules; may be required to take competency tests; and may need to secure continuing education credits. IRS intends to notify the public of who is registered, and may provide to the public information sufficient to advise the public if a preparer is removed from the program. The IRS will also maintain information about individual providers of continuing education for paid tax return preparers, and intends to make certain information about these providers available to the public to assist return preparers in locating appropriate continuing education opportunities and to enable taxpayers to know the subject matter of courses a paid tax return preparer may have taken.

A proposed rule exempting the proposed system of records from certain provisions of the Privacy Act will be published separately in the **Federal Register**.

One provision of the Act, 5 U.S.C. 552a(d)(5), allows an agency to exempt qualifying material and is frequently overlooked by the public until it is invoked by an agency. The Internal Revenue Service is providing notice of its authority to assert the exemption granted by subsection (d)(5) to any record maintained in any of its systems of records when appropriate to do so. 5 U.S.C. 552a(d)(5) states that ''nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.'' This subsection permits an agency to withhold a record from the access provisions of the Privacy Act and reflects Congress's intent to exclude civil litigation files which includes quasi-judicial administrative hearings from access under subsection (d)(1). Unlike the other Privacy Act exemptions (see 5 U.S.C. 552a(j)(2) and (k)), subsection (d)(5) is entirely ''self-executing,'' and as such it does not require an implementing regulation in order to be effective.

As required by 5 U.S.C. 552a(r), a report of a new system of records has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The system of records entitled ''Treasury/IRS 37.111—Preparer Tax Identification Number Records'' is published in its entirety below.

Dated: October 24, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/IRS 37.111

SYSTEM NAME:

Preparer Tax Identification Number Records.

SYSTEM LOCATION:

National Office, Field Offices, Campuses, and Computing Centers. (See IRS Appendix A for addresses of IRS offices.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for a PTIN; registered paid tax return preparers (individuals issued a PTIN); individuals whose application or registration is rejected, revoked, or suspended. Individual providers of continuing education for paid tax return preparers, including applicants for IRS approval, approved providers, and former providers. Individual contractors who assist the IRS in reviewing continuing education provider applications. Individuals who communicate with the IRS regarding the paid tax return preparer registration program or about any specific paid tax return preparer or continuing education provider.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records pertaining to paid tax return preparers, including records pertaining to applications for registration, renewal of registration, revocations, suspensions, and appeals; records pertaining to IRS investigation and evaluation of eligibility for registration; records relating to proof of identity for applicants who do not have Social Security Numbers; records related to competency testing, including applications, answer sheets, and test scores; records related to background, fingerprint, and tax compliance checks; records on continuing education requirements to become a registered paid tax return preparer; and information related to testing and education exemptions due to supervised status and types of returns prepared. Records pertaining to individual providers of continuing education for paid tax return preparers, including applications for IRS approval of courses or programs, grants and denials of such applications, and records of participation in offered courses and programs. Records pertaining to individual contractors who assist IRS in reviewing continuing education provider applications. Records pertaining to received communications.

Note: Disciplinary records pertaining to registered paid tax return preparers are maintained in Treasury/IRS 37.007, Practitioner Disciplinary Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 330.

PURPOSE(S):

To administer records pertaining to the issuance of Preparer Tax Identification Numbers (PTINs) to registered paid tax return preparers.

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

Returns and return information may be disclosed only as authorized by 26 USC 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which IRS collected the records, and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS determines that the records are relevant and necessary to the proceeding or advice sought.

(2) Disclose information during a proceeding before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS or DOJ determines that the information is relevant and necessary to the proceeding. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to an arbitrator, mediator, or other neutral, in the context of alternative dispute resolution, to the extent relevant and necessary for resolution of the matters presented, including asserted privileges. Information may also be disclosed to the parties in the alternative dispute resolution proceeding.

(4) Disclose to a Federal, State, local, or tribal agency, or other public authority, which has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(5) Disclose pertinent information to an appropriate Federal, State, local, or tribal agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of, a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(6) Disclose information to foreign governments in accordance with international agreements.

(7) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(8) Disclose information to professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar and accountancy disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.

(9) To the extent consistent with the American Bar Association's Model Rules of Professional Conduct, Rule 4.2, disclose to a person the fact that his chosen legal representative may not be authorized to represent him before the IRS.

(10) Disclose information to a contractor, including an expert witness or a consultant, hired by the IRS, to the extent necessary for the performance of a contract.

(11) Disclose information to a supervised tax return preparer sufficient

to identify the supervising tax return preparer, and information to a supervising tax return preparer sufficient to identify the tax return preparers who have named that individual as their supervisor.

(12) Disclose information to a contractor's financial institution to the extent necessary for the processing of PTIN application and registration fee payments.

(13) Disclose information to a former employee of the IRS to the extent necessary for personnel-related or other official purposes when the IRS requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(14) Disclose information to the public sufficient to identify individuals who have registered with the IRS as a paid tax return preparer and been issued a PTIN, and to advise the public when such an individual is removed from the program.

(15) Disclose information to the public sufficient to identify individual providers of continuing education for paid tax return preparers, including contact information.

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Records pertaining to paid tax return preparers may be retrieved by the preparer's Preparer Tax Identification Number (PTIN), name, Taxpayer Identification Number (Social Security Number or Employer Identification Number), or application number. Records pertaining to individual continuing education providers may be retrieved by provider name, Taxpayer Identification Number, application number, or course or program number. Records pertaining to contractors may be retrieved by contractor name or Taxpayer Identification Number, or by contract number. Records pertaining to communications with individuals regarding the paid tax return preparer registration program may be retrieved by the name of the individual or the name or other identifying information of a paid tax return preparer or a continuing education provider identified in the communication. Records may also be retrieved by IRS employee identification number for the employee assigned to the case, project, or determination.

SAFEGUARDS:

Only persons authorized by law will have access to these records. Security standards will not be less than those published in TD P 71–10, Department of the Treasury Security Manual, and IRM 10, Security, Privacy and Assurance.

RETENTION AND DISPOSAL:

Record retention will be established in accordance with the National Archives and Records Administration Regulations Part 1228, Subpart B—Scheduling Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Return Preparer Office, 1111 Constitution Ave. NW., Washington, DC, 20224. Phone: (202) 927–6428 (not a toll-free number).

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR, Part 1, Appendix B. Written inquiries should be addressed to Director, ETA, Wage and Investment, 1111 Constitution Ave. NW., Washington, DC, 20224. This system of records contains records that are exempt from the notification, access and contest requirements pursuant to 5 U.S.C. 552a(k)(2).

RECORDS ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORDS PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. With respect to records other than tax records, see ''Notification Procedure'' above.

RECORDS SOURCE CATEGORIES:

Applicants and registered paid tax return preparers; Treasury and other Federal agency records; state and municipal government agencies; contractors; continuing education providers; witnesses; professional organizations; publicly available records such as real estate records and news media.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36)

[FR Doc. 2011–29372 Filed 11–14–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed Alterations to Privacy Act Systems of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Internal Revenue Service, gives notice of the proposed consolidation of twelve Privacy Act systems of records.

DATES: Comments must be received no later than December 15, 2011. These altered systems of records will be effective December 20, 2011 unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Sarah Tate, Office of Associate Chief Counsel, Procedure & Administration, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Comments will be available for inspection and copying in the Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Sarah Tate, Procedure & Administration, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Ms. Tate may be reached via telephone at (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The IRS proposes to consolidate the following twelve systems of records maintained by the Office of Chief Counsel into six systems of records:

IRS 90.001—Chief Counsel Criminal Tax Case Files;

IRS 90.002—Chief Counsel Disclosure & Privacy Law Case Files;
IRS 90.003—Chief Counsel General Administrative Systems;
IRS 90.004—Chief Counsel General Legal Services Case Files;
IRS 90.005—Chief Counsel General Litigation Case Files;
IRS 90.009—Chief Counsel Field Service Case Files;
IRS 90.010—Chief Counsel Library Digest Room Files;
IRS 90.011—Chief Counsel Attorney Recruiting Files;
IRS 90.013—Chief Counsel, Deputy Chief Counsel, and Associate Chief Counsel Legal Files;
IRS 90.015—Chief Counsel Library Reference Records;
IRS 90.016—Chief Counsel Automated System Environment (CASE) Records;
IRS 90.017—Chief Counsel Correspondence Control and Records, Associate Chief Counsel (Technical and International).

The consolidation is to reflect organizational realignments, and to simplify the notices. Additional goals of the consolidation are that the records more closely reflect the nature of the work currently performed by the various components, both in headquarters and in the field, and to enumerate certain additional routine uses that may be made of the individually identifiable information maintained in these systems of records. When the IRS first promulgated its systems of records in 1975, the Office of Chief Counsel was aligned, in its headquarters operations, by the nature of the work performed and, in its field operations, by the type of the litigation activities performed. In 1998, Congress enacted the Internal Revenue Restructuring & Reform Act (RRA98), which, among other things, mandated the most dramatic organizational changes in the IRS (and the Office of Chief Counsel) since 1952. RRA98 directed the IRS to shift from a geographically based structure to a structure that serves particular groups of taxpayers with similar needs (i.e., individuals, small businesses, large businesses, and tax exempt entities).

Subsequently, the Office of Chief Counsel reorganized itself to more closely align to the restructured IRS. This consolidation should enable individuals to more readily identify the systems of records in which the Office of Chief Counsel may maintain records about them. In an effort to ease administration of the systems of records, the revised notices simplify the manner in which the Office of Chief Counsel maintains individually identifiable information. The additional routine uses address two types of disclosures: The first are those that typically occur during the conduct of IRS enforcement activities, including alternative dispute resolution proceedings and in litigation; the second are those that address ethical or conflict concerns that may arise during these enforcement activities. A final exemption rule, which does not alter the exemptions claimed for this individually identifiable information maintained in these consolidated systems of records, is being published separately under the rules section of the **Federal Register**.

The IRS currently maintains twelve systems of records related to the functions of the Office of Chief Counsel. Notices describing these systems of records were most recently published at 73 FR 13349–13363 (March 12, 2008). As described below, the IRS proposes to consolidate the twelve systems into six systems:

Treasury/IRS 90.001—Chief Counsel Workload and Assignment Records. This system is the former Treasury/IRS 90.016 which maintains records concerning case file identification and status tracking information.

Treasury/IRS 90.002—Chief Counsel Litigation and Advice (Civil) Records. This system consolidates portions of former Treasury/IRS 90.002 (records pertaining to advice and litigation pertaining to the confidentiality and disclosure requirements applicable to agency records) and former Treasury/IRS 90.009 (records pertaining to tax litigation). This system also consolidates all of the following former systems:

- Treasury/IRS 90.004 maintains records pertaining to providing legal advice and assistance, and making determinations and rendering advisory opinions, on a number of non-tax laws, including ''housekeeping'' statutes governing the management of Federal agencies;
- Treasury/IRS 90.005 maintains records pertaining to providing legal advice and assistance, and making determinations and rendering advisory opinions, on matters involving bankruptcy, information gathering and summonses, and the collection of liabilities imposed by the Internal Revenue Code and selected sections of the United States Code (as delegated by the Department of the Treasury);
- Treasury/IRS 90.013 maintains records pertaining to providing legal advice and assistance, and making determinations and rendering advisory opinions, to the IRS, taxpayers, and the Department of Justice on matters involving significant or novel issues or circumstances, and
- Treasury/IRS 90.017 maintain records pertaining to providing legal advice and assistance, and making determinations and rendering advisory opinions, on issues pertaining to corporations, financial institutions, financial products, income tax accounting, international law or treaties, partnerships and other passthrough entities, special industries such as automobile construction and natural resources procurement, and tax-exempt and government entities.

Treasury/IRS 90.003—Chief Counsel Litigation and Advice (Criminal) Records. This system is the former Treasury/IRS 90.001 which maintains records relating to the provision of legal advice and assistance, and making determinations and rendering advisory opinions, on the investigation of tax-related crimes and forfeiture matters. To assist in the prosecution of individuals charged with tax-related crimes.

Treasury/IRS 90.004—Chief Counsel Legal Processing Division Records. This system includes the remaining portions of former Treasury/IRS 90.002, concerning FOIA and Privacy Act requests and administrative appeals, and former Treasury/IRS 90.009, concerning certain ministerial activities pertaining to user fees previously handled within the various Associate or Division Counsel offices.

Treasury/IRS 90.005—Chief Counsel Library Records. This system includes the former:

- Treasury/IRS–90.010 that pertains to reference work product and which permits the office to research the internal revenue laws, including litigation and technical positions, and
- Treasury/IRS–90.015—that maintains records permitting the office to track the location of borrowed library materials and to obtain new library materials as needed.

Treasury/IRS 90.006—Chief Counsel Human Resources and Administrative Records. This system includes the former:

- Treasury/IRS 90.003 which maintains records to manage personnel, timekeeping, recruitment, expenditures, and other data regarding employee and expert witness activities, and
- Treasury/IRS 90.011 which maintains records to facilitate the recruitment of attorneys for employment with the Office of Chief Counsel.

Application of a Privacy Act Exemption

One provision of the Act, 5 U.S.C. 552a(d)(5), allows an agency to exempt qualifying material and is frequently overlooked by the public until it is invoked by an agency. The Internal Revenue Service is providing notice of

its authority to assert the exemption granted by subsection (d)(5) to any record maintained in any of its systems of records when appropriate to do so. 5 U.S.C. 552a(d)(5) states that ''nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.'' This subsection permits an agency to withhold a record from the access provisions of the Privacy Act and reflects Congress's intent to exclude civil litigation files which includes quasi-judicial administrative hearings from access under subsection (d)(1). Unlike the other Privacy Act exemptions (see 5 U.S.C. 552a(j)(2) and (k)), subsection (d)(5) is entirely ''self-executing,'' and as such it does not require an implementing regulation in order to be effective.

The report of the altered systems of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to Appendix I to OMB circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The six proposed consolidated systems of records, described above, are published in their entirety below.

Dated: October 24, 2011.

Melissa Hartman,

Deputy Assistant Secretary Privacy, Transparency, and Records.

Treasury/IRS 90.001

SYSTEM NAME:

Chief Counsel Management Information System Records—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Counsel; Office of the Special Counsel to the National Taxpayer Advocate; Offices of the Associate Chief Counsel (Corporate), (Financial Institutions & Products), (General Legal Services), (Income Tax & Accounting), (International), (Passthroughs & Special Industries), (Procedure & Administration); Offices of the Division Counsel/Associate Chief Counsel, (Criminal Tax) and (Tax Exempt & Government Entities); and Office of the Division Counsel (Large Business & International), (Small Business/Self Employed) and (Wage & Investment); and Area Counsel offices. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who are the subjects of, or are connected to, matters received by or assigned to the Office of Chief Counsel.

(2) Chief Counsel employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records that contain summary information concerning the description and status of assignments received in the Office of Chief Counsel. These records include the names or subjects of a case, the case file number, case status, issues, professional time expended, and due dates. These records may be used to produce management information on case inventory by taxpayer or employee name and processional time required to complete an assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 330.

PURPOSE:

The computerized Counsel Automated System Environment (CASE) system is used to track, count, and measure the workload of the Office of Chief Counsel, capturing summary information (such as the name of principal parties or subjects, case file numbers, assignments, status, and classification) of cases and other matters assigned to Counsel personnel throughout their life cycle. CASE is used to generate reports to assist management and other employees to keep track of resources and professional time devoted to individual assignments and broad categories of workload. CASE information is also useful in the preparation of budget requests and other reports to the IRS, to the Treasury Department, or the Congress. CASE also serves as a timekeeping function for employees of the Office of Chief Counsel directly involved in cases and other matters.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records and no privilege is asserted. Accordingly, the IRS may:

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) the IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to the parties and to an arbitrator, mediator, or other neutral party, in the context of alternative dispute resolution, to the extent relevant and necessary for resolution of the matters presented, including asserted privileges.

(4) Disclose information to a former employee of the IRS to the extent necessary to refresh their recollection for official purposes when the IRS requires information and/or consultation assistance from the former employee regarding a matter within that individual's former area of responsibility.

(5) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(6) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(7) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any

regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(8) Disclose information to a Federal, State, local, or tribal agency, or other public authority that has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(9) To the extent consistent with the American Bar Association's Model Rules of Professional Conduct, Rule 4.2, disclose to any person the fact that his chosen legal representative may not be authorized to represent him before the IRS.

(10) Disclose information to a public, quasi-public, or private professional authority, agency, organization, or association, with which individuals covered by this system of records may be licensed by, subject to the jurisdiction of, a member of, or affiliated with, including but not limited to state bars and certified accountancy boards, to assist such authorities, agencies, organizations and associations in meeting their responsibilities in connection with the administration and maintenance of standards of integrity, conduct, and discipline.

(11) Disclose information to foreign governments in accordance with international agreements.

(12) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by the name or taxpayer identification number of the individual to whom they apply, employees assigned, and by workload case number. If there are multiple parties to a proceeding, then the record is generally retrieved only by the name of the first listed person in the complaint or other document.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in secured areas. Access to keys to these offices is restricted. Access to records storage facilities is limited to authorized personnel or individuals in the company of authorized personnel. Access controls are not less than those provided by the Physical Security Standards, IRM 1.16, and Information Technology (IT) Security Policy and Standards, IRM 10.8.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the records control schedules applicable to the records of the Office of Chief Counsel, IRM 1.15.13 through 1.15.15.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Finance & Management). See the IRS Appendix published in the **Federal Register** on March 12, 2008, for the address.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, appendix B. Written inquiries should be addressed to Chief, Disclosure and Litigation Support Branch, Legal Processing Division, IRS Office of Chief Counsel, CC:PA:LPD:DLS, 1111 Constitution Avenue NW., Washington, DC 20224. This system of records may contain records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

IRS and Chief Counsel employees; Department of Treasury employees; court records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2) and 552a(k)(2). See 31 CFR 1.36.

Treasury/IRS 90.002

SYSTEM NAME:

Chief Counsel Litigation and Advice (Civil) Records—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Counsel; Offices of the Associate Chief Counsel (Corporate), (Financial Institutions & Products), (General Legal Services), (Income Tax & Accounting), (International), (Passthroughs & Special Industries), and (Procedure & Administration); Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities); Offices of the Division Counsel (Large Business & International), (Small Business/Self Employed) and (Wage & Investment); Office of the Special Counsel to the National Taxpayer Advocate; Office of the Special Counsel to the Office of Professional Responsibility; and Area Counsel offices. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who have requested advice in the form of a letter ruling, closing agreement, or information letter as set forth under the first annual revenue procedure published by the IRS each year.

(2) Individuals who are the subject of technical advice that responds to any request on the interpretation and proper application of tax laws, tax treaties, regulations, revenue rulings, notices, or other precedents to a specific set of facts that concerns the treatment of an item in a year under examination or appeal, which is submitted under the second annual revenue procedure published by the IRS each year.

(3) Individuals who request Advance Pricing Agreements (APA). This includes individuals who request a pre-filing conference with the APA program prior to submitting an APA request.

(4) Individuals about whom advice has been requested or provided under any other internal rules and procedures, such as may be set forth in the Internal Revenue Manual (IRM) or Chief Counsel Notices.

(5) Individuals who are subjects of, or provide information pertinent to, matters under the jurisdiction of the Office of Professional Responsibility, when such matters are brought to the attention of Counsel;

(6) Individuals who are parties to litigation with the IRS, or in litigation in which the IRS has an interest, or in proceedings before an administrative law judge.

(7) Individuals who have corresponded with, or who are the subjects of correspondence to, the IRS regarding a matter under consideration by these offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Advice files;

(2) Litigation files;

(3) Correspondence files;

(4) Advance Pricing Agreement files;

(5) Reference copies of selected work products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 330 and 5314.

PURPOSE:

To represent the IRS' interests in litigation before the United States Tax Court and in proceedings before administrative law judges; To assist the Department of Justice in representing the IRS' interests in litigation before other Federal and state courts; To provide legal advice and assistance on civil tax administration matters, including matters pertaining to practice before the IRS and the regulation of tax return preparers; To respond to general inquiries and other correspondence related to these matters; To assist Counsel staff in coordinating and preparing future litigation, advice, APAs, or correspondence, to ensure the consistency of such work products and to retain copies of work products for historical, legal research, investigational, and similar purposes.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted. Accordingly, the IRS may:

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to the parties and to an arbitrator, mediator, or other neutral, in the context of alternative dispute resolution, to the extent relevant and necessary for resolution of the matters presented, including asserted privileges.

(4) Disclose information to a former employee of the IRS to the extent necessary to refresh their recollection for official purposes when the IRS requires information and/or consultation assistance from the former employee regarding a matter within that individual's former area of responsibility.

(5) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(6) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(7) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(8) Disclose information to a Federal, State, local, or tribal agency, or other public authority that has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(9) To the extent consistent with the American Bar Association's Model Rules of Professional Conduct, Rule 4.2, and Circular 230, disclose to any person the fact that his chosen legal representative may not be authorized to represent him before the IRS.

(10) Disclose information to a public, quasi-public, or private professional authority, agency, organization, or association, with which individuals covered by this system of records may be licensed by, subject to the jurisdiction of, a member of, or affiliated with, including but not limited to state bars and certified accountancy boards, to assist such authorities, agencies, organizations and associations in meeting their responsibilities in connection with the administration and maintenance of standards of integrity, conduct, and discipline.

(11) Disclose information to foreign governments in accordance with international agreements.

(12) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(13) Disclose information to the news media as described in the IRS Policy Statement P–1–183, News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(14) Disclose information to other Federal agencies holding funds of an individual for the purpose of collecting a liability owed by the individual.

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

compromise and prevent, minimize, or remedy such harm.

Records of the Office of the Associate Chief Counsel (General Legal Services), including the various Area Counsel (General Legal Services), may also be used as described below if the IRS deems the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted.

(16) Disclose information to the Joint Board of Actuaries in enrollment and disciplinary matters.

(17) Disclose information to the Office of Personnel Management, Merit Systems Protection Board, the Office of Special Counsel, and the Equal Employment Opportunity Commission in personnel, discrimination, and labor management matters.

(18) Disclose information to arbitrators, the Federal Labor Relations Authority, including the Office of the General Counsel of that authority, the Federal Service Impasses Board, and the Federal Mediation and Conciliation Service in labor management matters.

(19) Disclose information to the General Services Administration in property management matters.

(20) Disclose information regarding financial disclosure statements to the IRS, which makes the statements available to the public as required by law.

(21) Disclose information to other federal agencies for the purpose of effectuating inter-agency salary offset or inter-agency administrative offset.

(22) Disclose information to the Office of Government Ethics in conflict of interest, conduct, financial statement reporting, and other ethics matters.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By the (1) Name(s) of the individual(s) to whom the records pertain, and related individuals; (2) subject matter; (3) certain key administrative dates; and (4) the internal control number for correspondence. If there are multiple parties to litigation, or other proceeding, then the record is generally retrieved only by the name of the first listed person in the complaint or other document.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in secured areas. Access to keys to these offices is restricted. Access to records storage facilities is limited to authorized personnel or individuals in the company of authorized personnel. Access controls are not less than those provided by the Physical Security Standards, IRM 1.16, and Information Technology (IT) Security Policy and Standards, IRM 10.8.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the records control schedules applicable to the records of the Office of Chief Counsel, IRM 1.15.13 through 1.15.15 and 1.15.30.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Chief Counsel, Special Counsel to the National Taxpayer Advocate, Special Counsel to the Office of Professional Responsibility, each Associate Chief Counsel, and each Division Counsel is the system manager of the system in that office. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for addresses.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, appendix B. Written inquiries should be addressed to Chief, Disclosure and Litigation Support Branch, Legal Processing Division, IRS Office of Chief Counsel, CC:PA:LPD:DLS, 1111 Constitution Avenue NW., Washington, DC 20224. This system of records may contain records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(k)(2). The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers and their representatives; Department of the Treasury personnel; other Federal agencies; State, local, tribal, and foreign governments, and other public authorities; witnesses; informants; parties to disputed matters of fact or law; judicial and administrative proceedings; congressional offices; labor organizations; public records such as telephone books, Internet Web sites, court documents, and real estate records; individual subjects of legal advice, written determinations, and other correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

Treasury/IRS 90.003

SYSTEM NAME:

Chief Counsel Litigation and Advice (Criminal) Records—Treasury/IRS.

SYSTEM LOCATION:

Immediate Office of the Chief Counsel; Office of the Division Counsel/ Associate Chief Counsel (Criminal Tax); and Area Counsel (Criminal Tax) offices. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individual subjects of investigations as to their compliance with tax and other laws under the jurisdiction of IRS Criminal Investigation, with respect to whom criminal recommendations have been made.

(2) Individuals who have requested advice, and about whom advice has been requested, concerning tax-related and criminal offenses under the jurisdiction of IRS Criminal Investigation, where these matters or issues are brought to Counsel's attention.

(3) Individuals who have filed petitions for the remission or mitigation of forfeitures or who are otherwise directly involved as parties in judicial or administrative forfeiture matters.

(4) Individuals who have requested advice, about whom advice has been requested, or with respect to whom a criminal recommendation has been made concerning non-tax criminal matters delegated to the IRS for enforcement and investigation, such as money laundering (18 U.S.C. 1956 and 1957) and the Bank Secrecy Act (31 U.S.C. 5311–5330).

(5) Individuals about whom advice has been requested or provided under

any internal rules and procedures, as may be set forth in the Internal Revenue Manual (IRM), Chief Counsel Notices, or other internal issuances.

(6) Individuals who are parties to litigation with the IRS, or in litigation in which the IRS has an interest.

(7) Individuals who have corresponded with the IRS regarding a matter under consideration by these offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Advice files;

(2) Litigation files;

(3) Correspondence files;

(4) Reference copies of selected work products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; 31 U.S.C. 330 and 5311–5332.

PURPOSE:

To provide legal advice and assistance on criminal tax administration matters, and on nontax criminal matters delegated to the IRS. To assist the Department of Justice (DOJ) in representing the IRS' interests in litigation before Federal and state courts. To respond to general inquiries and other correspondence related to these matters. To assist Counsel staff in coordinating and preparing future litigation, advice, or correspondence to ensure the consistency of such work products and to retain copies of work products for historical, legal research, investigational, and similar purposes.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted. Accordingly, the IRS may:

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to the parties and to an arbitrator, mediator, or other neutral, in the context of alternative dispute resolution, to the extent relevant and necessary for resolution of the matters presented, including asserted privileges.

(4) Disclose information to a former employee of the IRS to the extent necessary to refresh their recollection for official purposes when the IRS requires information and/or consultation assistance from the former employee regarding a matter within that individual's former area of responsibility.

(5) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(6) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(7) Disclose information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(8) Disclose information to a Federal, State, local, or tribal agency, or other public authority that has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(9) To the extent consistent with the American Bar Association's Model Rules of Professional Conduct, Rule 4.2, disclose to any person the fact that his chosen legal representative may not be authorized to represent him before the IRS.

(10) Disclose information to a public, quasi-public, or private professional authority, agency, organization, or association, with which individuals covered by this system of records may be licensed by, subject to the jurisdiction of, a member of, or affiliated with, including but not limited to state bars and certified accountancy boards, to assist such authorities, agencies, organizations and associations in meeting their responsibilities in connection with the administration and maintenance of standards of integrity, conduct, and discipline.

(11) Disclose information to foreign governments in accordance with international agreements.

(12) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(13) Disclose information to the news media as described in the IRS Policy Statement P–1–183, News Coverage To Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(14) Disclose information to other Federal agencies holding funds of an individual for the purpose of collecting a liability owed by the individual.

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By the (1) Name(s) of the individual(s) to whom the records pertain, and related individuals; (2) subject matter; (3) certain key administrative dates; and (4) the internal control number for correspondence. If there are multiple parties to a proceeding, then the record is generally retrieved only by the name of the first listed person in the complaint or other document.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in secured areas. Access to keys to these offices is restricted. Access to records storage facilities is limited to authorized personnel or individuals in the company of authorized personnel. Access controls are not less than those provided by the Physical Security Standards, IRM 1.16, and Information Technology (IT) Security Policy and Standards, IRM 10.8.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the records control schedules applicable to the records of the Office of Chief Counsel, IRM 1.15.13 through 1.15.15 and 1.15.30.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Division Counsel/Associate Chief Counsel (Criminal Tax) is the system manager. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for addresses.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, appendix B. Written inquiries should be addressed to Chief, Disclosure and Litigation Support Branch, Legal Processing Division, IRS Office of Chief Counsel, CC:PA:LPD:DLS, 1111 Constitution Avenue NW., Washington, DC 20224. This system of records may contain records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2). The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Taxpayers, or other subjects of investigation, and their representatives; Department of the Treasury personnel; other Federal agencies; State, local, tribal, and foreign governments, and other public authorities; witnesses; informants; parties to disputed matters of fact or law; judicial and administrative proceedings; congressional offices; labor organizations; public records such as telephone books, Internet Web sites, court documents, and real estate records; individual subjects of legal advice, written determinations, and other correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from sections (c)(3)–(4); (d)(1)–(4); (e)(1)–(3); (e)(4)(G)–(I); (e)(5); (e)(8); (f) and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). (See 31 CFR 1.36).

Treasury/IRS 90.004

SYSTEM NAME:

Chief Counsel Legal Processing Division Records—Treasury/IRS.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Procedure & Administration), National Office. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for the address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who communicate with the IRS regarding access requests under the Freedom of Information Act (FOIA), Privacy Act of 1974, or 26 U.S.C. 6110, where these matters or issues are brought to Counsel's attention; payers of user fees under 26 U.S.C. 7528, 6103(p), and 31 U.S.C. 9701; recipients of payments of court judgments; individual taxpayers who are the subject of written determinations or other work products processed for public inspection under the FOIA or 26 U.S.C. 6110.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence files.

(2) FOIA, Privacy Act, and 26 U.S.C. 6110 requests for Chief Counsel National Office records.

(3) Privacy Act requests to amend Chief Counsel National Office records.

(4) User fee files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 552, and 552a; 26 U.S.C. 7801 and 7803.

PURPOSE:

To coordinate searches and to make disclosure determinations with respect to Chief Counsel National Office records sought under FOIA, the Privacy Act, and 26 U.S.C. 6110. To respond to Privacy Act requests to amend Chief Counsel National Office records. To process user fees pertaining to Private Letter Rulings, Change in Accounting Methods (Form 3115), Change in Accounting Periods (Form 1128), Advance Pricing Agreements, and Closing Agreements. To process files for the payment of court judgments.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted. Accordingly, the IRS may:

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) the IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to the parties and to an arbitrator, mediator, or other neutral, in the context of alternative dispute resolution, to the extent relevant and necessary for resolution of the matters presented, including asserted privileges.

(4) Disclose information to a former employee of the IRS to the extent necessary to refresh their recollection for official purposes when the IRS

requires information and/or consultation assistance from the former employee regarding a matter within that individual's former area of responsibility.

(5) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(6) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(7) Disclose information to an appropriate Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(8) Disclose information to a Federal, State, local, or tribal agency, or other public authority that has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(9) To the extent consistent with the American Bar Association's Model Rules of Professional Conduct, Rule 4.2, disclose to any person the fact that his chosen legal representative may not be authorized to represent him before the IRS.

(10) Disclose information to a public, quasi-public, or private professional authority, agency, organization, or association, with which individuals covered by this system of records may be licensed by, subject to the jurisdiction of, a member of, or affiliated with, including but not limited to state bars and certified accountancy boards, to assist such authorities, agencies, organizations and associations in meeting their responsibilities in connection with the administration and maintenance of standards of integrity, conduct, and discipline.

(11) Disclose information to foreign governments in accordance with international agreements.

(12) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(13) Disclose information to the news media as described in the IRS Policy Statement P–1–183, News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(14) Disclose information to other Federal agencies holding funds of an individual for the purpose of collecting a liability owed by the individual.

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By the (1) Name(s) of the individual(s) to whom the records pertain, and related individuals; (2) subject matter; (3) certain key administrative dates; and (4) the internal control number for correspondence. If there are multiple parties to a proceeding, then the record is generally retrieved only by the name of the first listed person in the complaint or other document.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in secured areas. Access to keys to these offices is restricted. Access to records storage facilities is limited to authorized personnel or individuals in the company of authorized personnel. Access controls are not less than those provided by the Physical Security Standards, IRM 1.16, and Information Technology (IT) Security Policy and Standards, IRM 10.8.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the records control schedules applicable to the records of the Office of Chief Counsel, IRM 1.15.13 through 1.15.15. Freedom of Information Act request files are retained and disposed of in accordance with IRM 1.15.13.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Procedure & Administration), National Office. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for the address.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, appendix B. Written inquiries should be addressed to Chief, Disclosure and Litigation Support Branch, Legal Processing Division, IRS Office of Chief Counsel, CC:PA:LPD:DLS, 1111 Constitution Avenue NW., Washington, DC 20224. This system of records may contain records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Persons who communicate with the IRS regarding FOIA, Privacy Act, and 26 U.S.C. 6110 requests, user fees or judgment payments; Department of Treasury employees; State, local, tribal, and foreign governments, and other public authorities; other Federal agencies; witnesses; informants; public sources such as telephone books, Internet Web sites, court documents, and real estate records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

User fee and judgment payment files can be accessed as described above. All other records in this system have been designated as exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36).

Treasury/IRS 90.005

SYSTEM NAME:

Chief Counsel Library Records.

SYSTEM LOCATION:

Office of the Associate Chief Counsel (Finance & Management), National

Office. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for the address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) IRS employees who check out materials from the Library or through inter-library loans. (2) Individuals who are the subject of the work products maintained for reference (legal research) purposes on tax issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reference work product, including General Counsel Memoranda (GCMs), Office Memoranda (OMs), Actions on Decision (AODs), briefs, and other historical issuances dating back to 1916.

(2) Internal control records used to catalog and cross-reference records for legal research purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; and 31 U.S.C. 330.

PURPOSE:

To track the location of materials borrowed from the library or through inter-library loan and to permit the research of the internal revenue laws.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted. Accordingly, the IRS may:

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when (a) the IRS or any component thereof, (b) any IRS employee in his or her official capacity, (c) any IRS employee in his or her personal capacity where the IRS or the Department of Justice (DOJ) has agreed to provide representation for the employee, or (d) the United States is a party to, has an interest in, or is likely to be affected by such proceeding, and the IRS or the DOJ determines that the information is relevant and necessary and not otherwise privileged. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(4) Disclose information to a Federal, State, local, or tribal agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to a Federal, State, local, or tribal agency, or other public authority that has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(6) Disclose information to foreign governments in accordance with international agreements.

(7) Disclose information to the news media as described in the IRS Policy Statement P–1–183, News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(8) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

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

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the individual(s) to whom they pertain. If there are multiple parties to a proceeding, then the record is generally retrieved only by the identity of the first listed person in the complaint or other document.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in secured areas. Access to keys to these offices is restricted. Access to records storage facilities is limited to authorized personnel or individuals in the company of authorized personnel. Access controls are not less than those provided by the Physical Security Standards, IRM 1.16, and Information Technology (IT) Security Policy and Standards, IRM 10.8.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the records control schedules applicable to the records of the Office of Chief Counsel, IRM 1.15.13 through 1.15.15.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Chief Counsel (Finance & Management), National Office. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for the address.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, appendix B. Written inquiries should be addressed to Chief, Disclosure and Litigation Support Branch, Legal Processing Division, IRS Office of Chief Counsel, CC:PA:LPD:DLS, 1111 Constitution Avenue NW., Washington, DC 20224. This system of records may contain records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(j)(2) or (k)(2). The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

IRS employees; Congress; Department of the Treasury personnel; taxpayers and their representatives; other Federal agencies; witnesses; informants; State, local, tribal, and foreign governments, and other public authorities; parties to disputed matters of fact and law; other persons who communicate with the IRS; libraries to and from which inter-library loans are made; public sources such as telephone books, Internet Web sites, court documents, and real estate records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from sections (c)(3)–(4); (d)(1)–(4); (e)(1)–(3); (e)(4)(G)–(I); (e)(5); (e)(8); (f) and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). Some of the records in this system are exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

Treasury/IRS 90.006

SYSTEM NAME:

Chief Counsel Human Resources and Administrative Records—Treasury/IRS.

SYSTEM LOCATION:

All Chief Counsel offices. (See the IRS Appendix published in the **Federal Register** on March 12, 2008 for the address).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees of the Office of Chief Counsel;

(2) Applicants for employment in of the Office of Chief Counsel;

(3) Tax Court witnesses whose expenses are paid by the IRS.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records relating to personnel actions and determinations made about an individual while employed with the Office of Chief Counsel. These records include the records maintained in current and former employees' Official Personnel Folders and Employee Performance Folders, in accordance with Office of Personnel Management (OPM)'s regulations and instructions, which are described in the notices of OPM's government-wide systems of records, OPM/GOVT–1 and OPM/GOVT–2, respectively. The records reflect employment qualifications; employment history (including performance improvement plan or discipline records); training and awards; reasonable accommodation and similar records potentially containing medical information; and other recognition. These records include data documenting reasons for personnel actions, decisions, or recommendations and background material leading to any personnel action (including adverse action).

(2) Records relating to payroll processing, such as employee name, date of birth, Social Security number (SSN), home address, grade or rank, employing organization, timekeeper identity, salary, civil service retirement fund contributions, pay plan, number of hours worked, leave accrual rate, usage, and balances, deductions for Medicare and/or FICA, Federal, State and city tax withholdings, Federal Employees Governmental Life Insurance withholdings, Federal Employees Health Benefits withholdings, awards, commercial garnishments, child support and/or alimony wage assignments, allotments, and Thrift Savings Plan contributions.

(3) Employee recruiting records for attorney and non-attorney Chief Counsel Employees (including application files, eligible applicant listings, and internal control records).

(4) Financial records such as travel expenses, notary public expenses, moving expenses, expenses of Tax Court witnesses, fees and expenses of expert witnesses, and miscellaneous expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7803; and 31 U.S.C. 330.

PURPOSE:

To carry out personnel management responsibilities, including but not limited to (1) recommending or taking personnel actions such as appointments, promotions, separations (e.g., retirements, resignations), reassignments, within-grade increases, disciplinary or adverse actions; (2) employee training, recognition, or reasonable accommodation; (3) processing payroll so as to ensure that each employee receives the proper pay and allowances; that proper deductions and authorized allotments are made from employees' pay; and that employees are credited and charged with the proper amount of leave; (4) recruitment and other hiring decisions; and (5) to maintain records of individually based non-payroll expenditures such as expert witness and contractor expenses necessary to the operations of the Office. The records may also be used as a basis for staffing and budgetary planning and control, organizational planning, and human resource utilization.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted. Accordingly, the IRS may:

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are both relevant and necessary to the proceeding or advice sought. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding, and the IRS or the DOJ determines that the information is relevant and necessary to the proceeding. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to a court, authorized official acting pursuant to a court order or state or local law, a state agency, or the office of a bankruptcy trustee, for the purpose of implementing a garnishment or wage assignment order.

(4) Disclose information to all individuals, and/or a court, adjudicative body, or other administrative body, where multiple related individuals are

represented before the Service by one attorney, and a potential or actual conflict of interest arises, and the attorney fails to provide adequate confirmation to the Service that full disclosure of the conflict of interest situation has been made to all taxpayers and that all agree to the representation.

(5) Disclose information to the defendant in a criminal prosecution, the Department of Justice, or a court of competent jurisdiction where required in criminal discovery or by the Due Process Clause of the Constitution.

(6) Disclose information to the parties and to arbitrators, the Federal Labor Relations Authority, including the Office of the General Counsel of that authority, the Federal Service Impasses Board and the Federal Mediation and Conciliation Service in labor management matters.

(7) Disclose the results of a drug test performed at the work site, as provided by section 503 of the Supplemental Appropriations Act of 1987, Public Law 100–71, (101 Stat. 391, 468–471).

(8) Disclose information to a former employee of the IRS to the extent necessary to refresh their recollection for official purposes when the IRS requires information and/or consultation assistance from the former employee regarding a matter within that individual's former area of responsibility.

(9) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(10) Disclose information to a contractor hired by the IRS, including an expert witness or a consultant, to the extent necessary for the performance of a contract.

(11) Disclose pertinent information to a Federal, State, local, or tribal agency, or other public authority responsible for implementing, enforcing, investigating, or prosecuting the violation of a statute rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(12) Disclose information to a Federal, State, local, or tribal agency, or other public authority that has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(13) To the extent consistent with the American Bar Association's Model Rules of Professional Conduct, Rule 4.2, disclose to any person the fact that his chosen legal representative may not be authorized to represent him before the IRS.

(14) Disclose information to a public, quasi-public, or private professional authority, agency, organization, or association, with which individuals covered by this system of records may be licensed by, subject to the jurisdiction of, a member of, or affiliated with, including but not limited to state bars and certified accountancy boards, to assist such authorities, agencies, organizations and associations in meeting their responsibilities in connection with the administration and maintenance of standards of integrity, conduct, and discipline.

(15) Disclose information to foreign governments in accordance with international agreements.

(16) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(17) Disclose information to the news media as described in the IRS Policy Statement P–11–8, News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.19.1.9.

(18) Disclose information regarding financial disclosure statements to the IRS, which makes the statements available to the public as required by law.

(19) Disclose information to other Federal agencies holding funds of an individual for the purpose of collecting a liability owed by the individual.

(20) Disclose information to the Joint Board of Actuaries in enrollment and disciplinary matters.

(21) Disclose information to the Office of Personnel Management, Merit Systems Protection Board, the Office of Special Counsel, and the Equal Employment Opportunity Commission in personnel, discrimination, and labor management matters.

(22) Disclose information to the General Services Administration in property management matters.

(23) Disclose information to the Office of Government Ethics in conflict of interest, conduct, financial statement reporting, and other ethics matters.

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

(25) Disclose information to the General Services Administration Board of Contract Appeals, the Government Accountability Office, and other Federal agencies that address contracting issues in connection with disputes and protests of procurement actions and decisions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are generally retrieved by the name or taxpayer identity number of the individual to whom they apply. Records pertaining to expert witnesses may also be retrieved by the name of a party to the proceeding for which the expert was retained.

SAFEGUARDS:

A background investigation is made on personnel. Offices are located in secured areas. Access to keys to these offices is restricted. Access to records storage facilities is limited to authorized personnel or individuals in the company of authorized personnel. Access controls are not less than those provided by the Physical Security Standards, IRM 1.16, and Information Technology (IT) Security Policy and Standards, IRM 10.8.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the records control schedules applicable to the records of the Office of Chief Counsel, IRM 1.15.13 through 1.15.15, and to personnel records, IRM 1.15.38 and 1.15.39.

SYSTEM MANAGER(S) AND ADDRESS:

The Division Counsel/Associate Chief Counsel is the system manager of records in their respective offices. See the IRS Appendix published in the **Federal Register** on March 12, 2008, for addresses.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, appendix B. Written inquiries should be addressed to Chief, Disclosure and Litigation Support Branch, Legal Processing Division, IRS Office of Chief Counsel, CC:PA:LPD:DLS, 1111 Constitution Avenue NW, Washington, DC 20224. This system of records may contain records that are exempt from the notification, access, and contest requirements pursuant to 5 U.S.C. 552a(k)(2). The IRS may assert 5 U.S.C. 552a(d)(5) as appropriate.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Department of the Treasury personnel; Tax Court and expert witnesses; other Federal agencies; witnesses; State, local, tribal, and foreign governments, and other public authorities; references provided by the applicant, employee, or expert witness; former employers; public records such as telephone books, Internet Web sites, court documents, and real estate records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are as exempt from sections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(5). See 31 CFR 1.36.

[FR Doc. 2011–29380 Filed 11–14–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Proposed Information Collection (Board of Veterans' Appeals Customer Satisfaction With Hearing Survey Card) Activity; Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the effectiveness of current procedures used in conducting hearings.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Sue Hamlin (01C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or E–Mail: *sue.hamlin@mail.va.gov.* Please refer to ''OMB Control No. 2900–0548'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 632–5100.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Board of Veterans' Appeals Customer Satisfaction with Hearing Survey Card, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0745 is completed by appellants at the conclusion of their hearing with the Board of Veterans' Appeals. The data collected will be used to assess the effectiveness of current hearing procedures used in conducting hearings and to develop better methods of serving veterans and their families.

Affected Public: Individuals or households.

Estimated Annual Burden: 110 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,102.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Enterprise Records Service.

[FR Doc. 2011–29365 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0751]

Proposed Information Collection (Supplier Perception Survey) Activity; Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OAL), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to transform the acquisition and logistics operation.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Jesse Beaman, Acquisition and Logistics (001AL–P2), Department of Veterans Affairs, 810 Vermont Avenue

NW., Washington, DC 20420; or *email: Jesse.beaman@va.gov*. Please refer to ''OMB Control No. 2900–0751'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Jesse Beaman at (202) 461–2049, *Fax* (202) 273–6225.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OAL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OAL's functions, including whether the information will have practical utility; (2) the accuracy of OAL's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Supplier Perception Survey.

OMB Control Number: 2900–0751.

Type of Review: Extension of previously approved collection.

Abstract: The data collected will be used to improve the quality of services delivered to VA customers and to help develop key performance indicators in acquisition and logistics operations across VA enterprise.

Affected Public: Business or other for-profit, and not-for-profit institutions.

Estimated Annual Burden: 48,600 hours.

Estimated Average Burden per Respondent: 32 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 90,240.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Management Service.

[FR Doc. 2011–29369 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0723]

Proposed Information Collection (Mentor-Protégé Program Application and Reports) Activity; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish a mentor-protégé program agreement between a large business, veteran-owned small business and service-disabled veteran-owned small business and to report the success of the program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or *email: arita.tillman@va.gov*. Please refer to ''OMB Control No. 2900–0723'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, *Fax* (202) 273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 819.7108, Application Process.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 819.7113, Reports.

OMB Control Number: 2900–0723.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected under Department of Veterans Acquisition Regulation (VAAR) Clauses 819.7108 and 819.7113 will be used to institute a mentor-protégé program whereby large businesses agree to provide mutually developmental support to veteran-owned small business and service-disabled veteran-owned small business. VA will use the data to measure the protégé progress against the developmental plan contained in the approved agreement and to report the specific actions taken by the mentor to increase the participation of the protégé as a prime or subcontractor to VA.

Affected Public: Businesses or other for-profits. *Estimated Annual Burden:*

a. VAAR Clause 819.7108, Application Process—50 hours.

b. VAAR Clause 819.7113, Reports—150 hours.

Estimated Average Burden per Respondent:

a. VAAR Clause 819.7108, Application Process—60 minutes.

b. VAAR Clause 819.7113, Reports—60 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents:

a. VAAR Clause 819.7108, Application Process—50.

b. VAAR Clause 819.7113, Reports—50.

Total number of Responses: 200.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–29368 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Proposed Information Collection (Architect—Engineer Fee Proposal) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used to notify contractors of available work, solicit and evaluate bids, and monitor work in progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0208'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Architect—Engineer Fee Proposal, VA Form 10–6298.

b. Daily Log (Contract Progress Report—Formal Contract), VA Form 10–6131.

c. Supplement Contract Progress Report, VA Form 10–61001a.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. An Architect-engineering firm selected for negotiation of a contract with VA is required to submit a fee proposal based on the scope and complexity of the project. VA Form 10–6298 is used to obtain such proposal and supporting cost or pricing data from the contractor and subcontractor.

b. VA Forms 10–6131 and 10–6001a are used to record data necessary to assure the contractor provides sufficient labor and materials to accomplish the contract work. VA Form 10–6131 is used for national contracts and VA Form 10–6001a is used for smaller VA Medical Center station level projects and as an option on major projects before the interim schedule is submitted.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,341 hours.

a. VA Form 10–6298—1,000.

b. VA Form 10–6131—3,591.

c. VA Form 10–6001a—750.

Estimated Average Burden per Respondent:

a. VA Form 10–6298—4 hours.

b. VA Form 10–6131—12 minutes.

c. VA Form 10–6001a—12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 10–6298—250.

b. VA Form 10–6131—17,955.

c. VA Form 10–6001a—3,750.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–29362 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Proposed Information Collection (Application for Annual Clothing Allowance) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility for clothing allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or *email: cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0198'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or *Fax* (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the

quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Annual Clothing Allowance (Under 38 U.S.C. 1162), VA Form 10–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–8678 is used to gather the necessary information to determine if a veteran is eligible for clothing allowance benefits due to a service connected disability. Clothing allowance is payable if the veteran uses a prosthetic or orthopedic device (including a wheelchair) that tends to wear out or tear clothing or is prescribe medication for skin condition that causes irreparable damage to outer garments.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,120 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–29363 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0688]

Proposed Information Collection (Procedures, and Security for Government Financing) Activity; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to reduce or suspend contract payments and to determine if the contractor has adequate security to warrant payment in advance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) *http://www.Regulations.gov*; or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or *email: arita.tillman@va.gov*. Please refer to ''OMB Control No. 2900–0688'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, *Fax* (202) 273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) 832.006–4, Procedures.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) 832.202–4, Security for Government Financing.

OMB Control Number: 2900–0688.

Type of Review: Extension of a currently approved collection.

Abstract: Data collected under VAAR 832.006–4 will be used to assess a contractor's overall financial condition, and ability to continue contract performance if payments are reduced or suspended upon a finding of fraud. VA will use the data collected under VAAR 832.202–4 to determine whether or not a contractor has adequate security to warrant an advance payment.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

a. VAAR 832.006–4, Procedures—50 hours.

b. VAAR 832.202–4, Security for Government Financing—10 hours.

Estimated Average Burden per Respondent:

a. VAAR 832.006–4, Procedures—5 hours.

b. VAAR 832.202–4, Security for Government Financing—1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR 832.006–4, Procedures—10.

b. VAAR 832.202–4, Security for Government Financing—10.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–29367 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0669]

Proposed Information Collection (Claim for Credit of Annual Leave) Activity: Comment Request

AGENCY: Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Human Resources Management (HRM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to process current and former employee's claims for restored annual leave charged on a nonworkday while on military active duty.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Katie McCullough-Bradshaw, Human Resources Management (058), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or *email Katie.McCullough-Bradshaw@mail.va.gov.* Please refer to ''OMB Control No. 2900–0669]'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Katie McCullough-Bradshaw at (202) 461–7076 or *Fax* (202) 275–7607.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, HRM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of HRM's functions, including whether the information will have practical utility; (2) the accuracy of HRM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim for Credit of Annual Leave, VA Form 0862.

Type of Review: Extension of a currently approved collection.

OMB Control Number: 2900–0669.

Abstract: Current and former employee's who were charged annual leave on a nonworkday while on active military duty complete VA Form 0862 to request restoration of annual leave. Those employees who separated or retired from VA will receive a lump sum payment for any reaccredited annual leave. The claimant must provide documentation supporting the period that he or she were on active military duty during the time for which they were charged annual leave on a nonworkday.

Affected Public: Individuals or households and Federal Government.

Estimated Annual Burden: 3,375 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One–time.

Estimated Number of Respondents: 13,501.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–29366 Filed 11–14–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0725]

Proposed Information Collection (Survey of Veteran Enrollees (Quality and Efficiency of VA Health Care)) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to measure the quality of service provided to VHA beneficiaries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0725'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Veteran Enrollees (Quality and Efficiency of VA Health Care), VA Form 10–21088.

OMB Control Number: 2900–0725.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–21088 will be used to collect data that is necessary to promote quality and efficient delivery of health care through the use of health information technology transparency regarding quality, price and better incentives for program beneficiaries, enrollees and providers.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,133.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,080.

Dated: November 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–29364 Filed 11–14–11; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutant Emissions for Primary Lead Processing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0305; FRL–9491–2]

RIN 2060–AQ43

National Emission Standards for Hazardous Air Pollutant Emissions for Primary Lead Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review conducted for the Primary Lead Processing source category regulated under national emission standards for hazardous air pollutants (NESHAP). This action finalizes amendments to the NESHAP that include revision of the rule's title and applicability provision, revisions to the stack emission limits for lead, work practice standards to minimize fugitive dust emissions, and the modification and addition of testing and monitoring and related notification, recordkeeping, and reporting requirements. It also finalizes revisions to the regulatory provisions related to emissions during periods of startup, shutdown, and malfunction and makes minor non-substantive changes to the rule.

DATES: This final action is effective on November 15, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0305. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Nathan Topham, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–0483; *fax number:* (919) 541–3207; and *email address: topham.nathan@epa.gov.* For additional contact information, see the following **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: For specific information regarding the modeling methodology, contact Dr. Michael Stewart, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Toxics Assessment Group (C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–7524; *fax number:* (919) 541–0840; and *email address: stewart.michael@epa.gov.* For information about the applicability of this NESHAP to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS ACTION

NESHAP for:	OECA Contact [1]	OAQPS Contact [2]
Primary Lead Processing	Maria Malave, (202) 564–7027, *malave.maria@epa.gov.*	Nathan Topham, (919) 541–0483, *topham.nathan@epa.gov.*

[1] EPA's Office of Enforcement and Compliance Assurance.
[2] EPA's Office of Air Quality Planning and Standards.

Background Information Document. On February 17, 2011 (76 FR 9410), the EPA proposed revisions to the Primary Lead Smelting NESHAP based on evaluations performed by the EPA in order to conduct our risk and technology review. In this action, we are finalizing decisions and revisions for the rule. Some of the significant comments and our responses are summarized in this preamble; a summary of the other public comments on the proposal, and the EPA's responses to those comments, is available in Docket ID No. EPA–HQ–OAR–2004–0305. A red-line version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
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A. Executive Orders 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
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G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act

I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action include:

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code	MACT [2] code
Primary Lead Processing	331419	0204

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate national emission standards for hazardous air pollutants (NESHAP). As defined in the source category listing report published by the EPA in 1992, the Primary Lead Smelting source category is defined as any facility engaged in producing lead metal from ore concentrates; including, but not limited to, the following smelting processes: Sintering, reduction, preliminary treatment, and refining operations.[1] To be consistent with the 1992 listing, the EPA is revising the applicability of the Primary Lead Smelting NESHAP to apply to any facility that produces lead metal from lead ore concentrates and is changing the title of the rule to reference Primary Lead Processing. For clarification purposes, all reference to lead emissions in this preamble means ''lead compounds'' (which is a hazardous air pollutant) and all reference to lead production means elemental lead (which is not a hazardous air pollutant) as provided under Clean Air Act (CAA) section 112(b)(7)).

If you have any questions regarding the applicability of any aspect of the Primary Lead Processing NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the World Wide Web (www) through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed and promulgated rules at the following address: *http://www.epa.gov/ttn/caaa/new.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

C. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 17, 2012. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (TPY) or more, or 25 TPY or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

For MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as floor requirements and may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer

[1] USEPA. *Documentation for Developing the Initial Source Category List—Final Report,* USEPA/OAQPS, EPA–450/3–91–030, July, 1992.

than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor, under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. In promulgating MACT standards, CAA section 112(d)(2) directs us to consider the application of measures, processes, methods, systems, or techniques that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; and/or are design, equipment, work practice, or operational standards.

In the second stage of the regulatory process, we undertake two different analyses, as required by the CAA: section 112(d)(6) of the CAA calls for us to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years; and within 8 years after promulgation of the technology standards, CAA section 112(f) calls for us to evaluate the risk to public health remaining after application of the technology-based standards and to revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (DC Cir. 2008).

On February 17, 2011, the EPA published a proposed rule in the **Federal Register** for the Primary Lead Smelting NESHAP, 40 CFR part 63 subpart TTT, that took into consideration the residual risk and technology review (RTR) analyses for that source category. This action provides the EPA's final determinations pursuant to the RTR provisions of CAA section 112 for the Primary Lead Processing source category. Specifically, as a result of our analyses, we are revising the requirements of the NESHAP to ensure public health and the environment are protected consistent with section 112(f) and that emission reductions are consistent with what is economically and technically feasible under section 112(d)(6). In addition, we are taking the following actions:

- Revising the requirements in the NESHAP related to emissions during periods of startup, shutdown, and malfunction (SSM).
- Revising the title of the rule and amending the applicability section consistent with the definition of the source category adopted in 1992, to provide that the NESHAP applies to any facility processing lead ore concentrate to produce lead metal.
- Replacing the definition of ''primary lead smelter'' with a definition of ''primary lead processor'' and adding definitions of ''secondary lead smelters,'' ''lead refiners,'' and ''lead remelters.''
- Incorporating the use of plain language into the rule.
- Addressing technical and editorial corrections in the rule.
- Responding to the January 2009 petition for rulemaking from the Natural Resources Defense Council (NRDC) that the original primary lead NESHAP should have included an emission standard for organic HAP and announcing our intention to collect additional data needed to develop a standard for organic HAP.

We note that the Doe Run Herculaneum Smelter, the only facility in the source category, is subject to a Consent Decree requiring submission of a facility-wide cleanup plan by January 1, 2013, shutdown of their sintering operations by the end of 2013, and shutdown of the blast furnace by April 30, 2014. The Consent Decree will achieve drastic reductions in emissions of lead and other pollutants and will provide substantial environmental and public health benefits. The Herculaneum area has also been designated as a nonattainment area for the 2008 National Ambient Air Quality Standards (NAAQS) for lead. Attainment of the 2008 Lead NAAQS (which is demonstrated based on three years of data at or below the level of the NAAQS) is required by December 2015. The State of Missouri is required to submit its attainment demonstration State Implementation Plan (SIP) by June 30, 2012.

III. Summary of the Final Rule

A. What are the final rule amendments for the Primary Lead Processing source category?

The National Emission Standards for Hazardous Air Pollutant Emissions: Primary Lead Smelting was promulgated on June 6, 1999 (64 FR 30204), and codified at 40 CFR part 63, subpart TTT. The primary lead processing industry consists of facilities that produce lead metal from ore concentrates. The source category covered by this MACT standard currently includes only one operating facility, The Doe Run Company in Herculaneum, Missouri.

For the reasons provided in the proposed rule and in the support documents in the docket, we have determined that the risks associated with this source category are unacceptable and are therefore promulgating requirements to reduce the risk to an acceptable level. Once risk is reduced to an acceptable level, we analyze whether there are additional controls that will provide an ample margin of safety, considering cost, energy, safety, and other relevant factors. We have concluded that there are no additional cost-effective controls available beyond those that we are requiring to reduce risk to an acceptable level and thus the same controls to ensure an acceptable level of risk will also provide an ample margin of safety. To satisfy section 112(f) of the CAA, we are, therefore, revising the existing MACT standard to include:

- An emission cap of 1.2 TPY for the furnace area stack and the refining operation stacks, combined.[2]
- Work practice standards to minimize fugitive dust emissions.

To satisfy section 112(d)(6) of the CAA, we are revising the existing MACT standard to include a reduction of the lead emission limit for the main stack. The MACT standard is being lowered from the current 1.0 pound per ton of lead produced to 0.97 pound of lead per ton of lead produced based on a determination that developments in practices, processes, or control technologies since promulgation of the MACT standards demonstrate that the facility can meet a reduced emission limit from the main stack pursuant to CAA section 112(d)(6).

In addition to our reviews under sections 112(f) and 112(d)(6) of the CAA, we are promulgating the following:

- The revision of the applicability section of the rule consistent with the definition of the source category adopted in 1992, subpart TTT which applies to any facility that produces lead metal from lead concentrate ore.
- Changes to the Primary Lead Processing MACT standards to

[2] EPA notes that it is setting a combined emission limit for these sources because, as noted in the proposal (76 FR 9432), and the risk assessment documents to support the proposed and final rulemakings, these sources have overlapping points of maximum lead impact.

eliminate the SSM exemption. These changes revise Table 1 in 40 CFR part 63, subpart TTT to indicate that several requirements of the 40 CFR part 63 General Provisions related to periods of SSM do not apply. We are adding provisions to the Primary Lead Processing MACT standards requiring sources to operate in a manner that minimizes emissions, removing the SSM plan requirement, clarifying the required conditions for performance tests, and revising the SSM-associated recordkeeping and reporting requirements to require reporting and recordkeeping for periods of malfunction. We are also adding provisions to provide an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

• Replacement of the word ''shall'' with the word ''must'' in the regulatory text. We are also replacing ''thru'' with ''through.'' We are replacing the definition of ''primary lead smelter'' with a definition of ''primary lead processor'' and adding definitions of ''secondary lead smelters,'' ''lead refiners,'' and ''lead remelters.''

These revisions to the Primary Lead Processing MACT standard are expected to result in emissions reductions in lead and other hazardous air pollutants and increased compliance costs to the industry. No economic impacts on small businesses are expected as a result of the revisions to the rule. We have determined that the one facility in this source category can meet the applicable emissions standards at all times, including periods of startup and shutdown, in compliance with the current MACT standards.

B. What are the requirements during periods of startup, shutdown, and malfunction?

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA Section 112 regulations governing the emissions of HAP during periods of startup, shutdown, and malfunction (SSM). *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied, 130 S. Ct. 1735 (U.S. 2010).* Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under section 112 of the CAA. When incorporated into CAA Section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

We have eliminated the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA has established standards in this rule that apply at all times. We have also revised Table 1 (the General Provisions table) in several respects. For example, we have eliminated that incorporation of the General Provisions' requirement that the source develop an SSM plan. We have also eliminated or revised certain recordkeeping and reporting that related to the SSM exemption. The EPA has attempted to ensure that we have not included in the regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption.

In establishing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not established different standards for those periods. Information on periods of startup and shutdown in the industry indicate that emissions during these periods do not increase. Furthermore, all processes are controlled by either control devices or work practices, and these controls would not typically be affected by startup or shutdown. Also, compliance with the standards requires averaging of emissions over three-month periods, which accounts for the variability of emissions that may result during periods of startup and shutdown. Therefore, separate standards for periods of startup and shutdown are not being promulgated.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under section 112, emission standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the section 112 caselaw, nothing in that caselaw requires the Agency to consider malfunctions as part of that analysis. Section 112 uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See, e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (DC Cir. 1999) (EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.''). *See also, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good

faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emission standard. (*See, e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983)). The EPA is therefore adding to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 63.1542 Primary Lead Processing (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.). We also have added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 63.1551 Primary Lead Processing. (See 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section 63.1543(i) and 63.1544(d), and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with Section 113 of the Clean Air Act (see also 40 CFR 22.27).

The EPA included an affirmative defense in the final rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). *See generally Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (DC Cir. 2008) Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. While ''continuous'' limitations, on the one hand, are required, there is also caselaw indicating that in many situations it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (DC Cir. 1973), the DC Circuit acknowledged that in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus, 486 F.2d 375* (DC Cir. 1973). Though intervening caselaw such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). *But see, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (DC Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. section 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

C. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on November 15, 2011. For the MACT standards being addressed in this action, the compliance date for the revised SSM requirements is the effective date of the standards, November 15, 2011. The compliance date for the revised emission standard in section 16.1543(a) is January 17, 2012. The compliance date for the revised requirements in section 16.1544 is February 13, 2012. The compliance date for the new refining and furnace area stack emission limit is 2 years from the effective date of the standard, November 15, 2013.

IV. Summary of Significant Changes Since Proposal

A. Changes to the Risk Assessment Performed Under Section 112(f) of the Clean Air Act

As noted above, in February of 2011 EPA published the notice of proposed rulemaking: National Emission Standards for Hazardous Air Pollutants: Primary Lead Smelting. In the proposed rulemaking, EPA presented a number of options for additional controls on the primary lead smelting source category, which currently includes only one facility operating in the United States. In the proposed rule, EPA solicited comment on these options as well as on all the analyses and data the options were based upon, including the risk methods and results presented in the draft document: Draft Residual Risk

Assessment for the Primary Lead Smelting Source Category.

During the public comment period for the proposed rule, the one facility in the source category, The Doe Run Company, submitted substantially updated emissions, meteorological, facility boundary, as well as other relevant information bearing on the risk assessment (see docket number: EPA–HQ–OAR–2004–0305 for Doe Run's public comments). As a result, to support this final rulemaking EPA revised its analyses to reflect the information received during the public comment period for the proposed rule. Revised methods, model inputs, and risk results are presented in the report: ''Residual Risk Assessment for the Primary Lead Smelting Source Category'' which is available in the docket for this rulemaking. In addition, a discussion of the updated emissions information used in the final risk assessment can be found in the Technical Support Document for the final rule, which can also be found in the docket for this rulemaking.

Table 3 presents the results of the final baseline risk assessment, with respect to the risks due to lead emissions, broken down by emission point. In the baseline scenario, we estimate that approximately 1,550 people may be exposed to lead concentrations above the NAAQS. Results indicate that emissions from the refining stacks and furnace area stacks can likely result in exceedences of the NAAQS for lead beyond the fenceline of the facility.[3] These results also indicate that fugitive dust emissions could result in exposures approximately equal to the level of the NAAQS at the location of maximum impact. The results also indicate that emissions from the main stack do not likely result in exceedences of the NAAQS for lead beyond the fenceline of the facility because emissions are highly dispersed due to the height of the main stack.

TABLE 3—SUMMARY OF LEAD CONCENTRATIONS RELATIVE TO THE NAAQS BASED ON ESTIMATED ACTUAL 2009 EMISSIONS

Emission point	2009 Emissions (tpy)	Offsite impact [3]
Main stack [1]	68.3	0.9 times the NAAQS.
Refining stacks [2]	9.1	8 times the NAAQS.
Furnace area stack: (Controlled blast and drossing fugitives)	2.5	2 times the NAAQS.
Fugitive dust	1.0	1 times the NAAQS.

[1] Results presented for the main stack in this table consider the good engineering practice (GEP) stack height of 330 feet (as was done in the SIP and in modeling submitted by the Doe Run Company in its public comments on the proposed rulemaking). The actual height of the main stack is approximately 550 feet, and thus the impact would likely be lower had actual stack height been modeled.

[2] Emission sources controlled by baghouses 8 and 9 at the Doe Run facility.

[3] For a given emission point, the model receptor location with the highest modeled 3-month ambient lead concentration was determined. This highest 3-month ambient lead concentration was then divided by the NAAQS (0.15 $\mu g/m^3$) for lead to determine the maximum offsite impact for a given emission point.

Consistent with the risk assessment to support the proposed rulemaking, the risk assessment to support the final rulemaking also indicates that risks are unacceptable. This decision considers all the risk estimates presented in the risk assessment document, but is primarily based on lead emissions from the furnace area stack and the refining operations stacks. We note that while the risk assessment supporting the proposed rulemaking estimated that a combined emission limit for the furnace area and refining operations should be set at 0.91 tons of lead per year to ensure that risks are acceptable, the updated risk assessment estimates that a combined emission limit of 1.2 tons of lead per year will ensure that ambient lead concentrations from those emission points do not result in lead levels in the ambient air above the level of the NAAQS for lead, thereby resulting in acceptable lead risk. In our ample margin of safety analysis, we identified no cost-effective controls that are capable of achieving emission levels below 1.2 tons per year, as described in the technical support document. Thus, the EPA is promulgating a combined lead emission limit for the furnace area and refining operations stacks at 1.2 tons per year.[4] In addition, the risk assessment projected ambient lead concentrations from fugitive dust emissions to be very close to the NAAQS for lead at the location of maximum impact; thus with respect to fugitive dust emissions, since only minimal (if any) reductions beyond those already in place are needed to ensure lead levels in the air do not exceed the NAAQS, the EPA believes that the work practice standards being promulgated in this rule, which are more stringent than currently required by the 1999 NESHAP, will ensure an acceptable level of risk.

Moreover, since this NESHAP includes work practice standards to minimize fugitive dust emissions, and since ambient monitoring for lead is already conducted very close to this facility and in the local community to demonstrate whether the area is attaining the lead NAAQS, we have decided that fenceline monitoring to specifically demonstrate that the source has adopted sufficient work practice standards to ensure fugitive emissions do not cause exceedances of the NAAQS is not necessary.

In addition to the updated lead risk assessment results presented above, we also note that there were changes to our cancer, acute, and PB–HAP multipathway screening analyses for non-lead HAP as a result of the new risk analysis performed for the final rule. With respect to our updated cancer risk assessment, we estimate that the maximum individual risk (MIR) of cancer is 20 in a million (as compared to 30 in a million based on the risk assessment to support the proposed rule), and that the cancer incidence is 0.008, or 1 excess cancer case every 125 years (as compared to 0.0008 based on the risk assessment to support the proposed rule). In addition, the refined worst-case acute hazard quotient (HQ) value is 2.0 (based on the REL for arsenic), driven by arsenic emissions from the main stack (as compared to 0.6 based on the REL for arsenic and driven by arsenic fugitive dust emissions as indicated by the risk assessment to

[3] For the reasons noted in the proposed rulemaking, 76 FR at 9421, we used the level of the lead NAAQS as the level above which we think an unacceptable risk is presented to the public.

[4] EPA notes that it is setting a combined emission limit for these sources because, as noted in the proposal (76 FR 9432), and the risk assessment documents to support the proposed and final rulemakings, these sources have overlapping points of maximum lead impact.

support the proposed rule). Finally, while the worst-case multipathway screen to support the proposed rule indicated that no non-lead PB–HAP exceeded screening levels for potential multipathway effects, in the risk assessment to support the final rulemaking, the worst-case multipathway screening level was exceeded with respect to cadmium emissions. This is the result of the revised emissions information provided by the company during the comment period, which indicated higher cadmium emissions from the main stack than were assumed for purposes of the risk assessment performed for the proposed rule.

In considering the updated non-lead risk results presented above, we note that while cancer incidence increased in our updated risk assessment, cancer incidence remains very low with 1 excess cancer case being estimated every 125 years.

With respect to the worst-case acute HQ value of 2 based on the REL for arsenic due to emissions from the main stack, we note that this is a conservative, worst-case analysis of the potential for acute health effects. We also note that in contrast to the risk analysis to support the proposed rulemaking, the final risk analysis modeled the main stack at the good engineering practice (GEP) stack height of 330 feet rather than the actual stack height of 550 feet. Thus it is very likely that the maximum potential worst-case HQ value is significantly lower than 2.

Finally, with respect to the exceedence of the worst-case multipathway screening level for cadmium, we note that this only indicates the potential for cadmium exposures above the chronic noncancer reference dose (RfD) for cadmium. That is, while in general, emission rates below the worst-case multipathway screening level indicate no significant potential for multipathway related health effects, emission levels above this worst-case screening level only indicate the potential for multipathway-related health risks of concern based on a worst-case scenario. We were not able to refine our multi-pathway analysis beyond the worst-case screening assessment. As a result, based on worst case screening, we cannot state whether or not there are going to be multipathway risks at true exposure levels, we can only say that worst case modeling suggests there could be potential risks. However, due to the highly conservative nature of this screening assessment and the uncertainties related to the results, we have concluded that, after implementation of the controls required by this rule, risks will be acceptable, considering the combination of potential multipathway risks, cancer risks, chronic non-cancer risks, and acute non-cancer risks. We also reviewed whether there were cost-effective controls that could further reduce risks as part of our ample margin of safety analysis. The controls we are requiring to address lead emissions also reduce emissions of non-lead HAP. We were unable to identify any technically feasible cost effective additional controls that would further reduce emissions of lead and non-lead HAP. We are therefore determining that the standards we are promulgating today provide an ample margin of safety to protect public health.

In summary, the final rule includes an emission standard of 1.2 tons per year of lead emissions from refining and furnace area stacks, combined. The standard also includes a requirement for the facility to employ work practice standards to minimize fugitive dust emissions, including cleaning plant roadways, stabilization of material during storage and handling, and ensuring that doorways to process areas remain closed. In summary, we conclude that these standards being promulgated today will ensure risks are acceptable and public health is protected with an ample margin of safety and that there will not be an adverse environmental effect from HAP emissions from the one lead processing facility in this source category.

B. Changes to the Technology Review Performed Under Section 112(d)(6) of the Clean Air Act

In the proposed rule, the main stack was subject to an emission limit of 0.22 pounds of lead per ton of lead produced based on our section 112(d)(6) technology review. That proposed limit was based on information that indicated the source had significantly lower emissions than the emission limit of 1 pound of lead per ton of lead produced (lb/ton) required in the 1999 MACT standard. However, in comments received on the proposed rule, The Doe Run Company indicated that the proposed emission limit of 0.22 lb/ton under Section 112(d)(6) could not be met and that the data on which that emission limit was based were not accurate. The facility provided a 2009 stack emissions test for the main stack that indicated that emissions at the facility are significantly higher than we assumed as the basis for the proposed limit. For purposes of our analysis for the final rule, the EPA recalculated the emissions performance achieved for the main stack as demonstrated by the 2009 and 2008 stack tests and considered an estimate of emission variability in order to determine whether it was appropriate to revise the emission limit based on what the source was able to achieve in practice. Based on the revised analysis, we are promulgating an emission limit for the main stack of 0.97 pounds of lead per ton of lead produced.

We have also changed the compliance date for the main stack to reflect compliance ''as expeditiously as possible'' under section 112(i)(3) of the CAA. The compliance date for the 0.97 lb/ton limit is 60 days from the date of publication of the final rule.

C. Other Changes Since Proposal

The EPA has decided not to include the refining and furnace area emissions as part of a facility wide emission limit as was proposed. We received comments from Doe Run on the proposed rule that inclusion of these sources in the production based emission limit in section 63.1543(a) was not necessary and that these sources would simultaneously be required to comply with the standard for refining and furnace area emissions proposed under section 112(f) and the production based limit proposed under section 112(d)(6). We agree with the commenters and we are establishing a separate emission limit of 1.2 tons per year of lead emissions that applies to the combined emissions of the refining and furnace area stacks. The emission standard limits the combined emissions from these two stacks because the revised risk assessment indicated that the location of maximum impact for these two stacks overlapped at the same receptor. A production based emission limit will continue to apply to sources in section 63.1543(a)(1)–(9).

As mentioned earlier, we are not finalizing a requirement for fenceline monitoring to ensure that fugitive dust emissions do not cause an exceedance of the NAAQS offsite. The revised modeling showed substantially lower ambient concentrations due to fugitive dust emissions relative to the modeling performed for the proposed rule. We estimate current fugitive dust emissions result in maximum lead levels offsite that are approximately equal to the NAAQS. We are promulgating work practice standards beyond what is required by the 1999 rule that must be implemented by the source in order to ensure that fugitive emissions will not result in an exceedance of the NAAQS and thus result in an unacceptable risk. We expect that after implementation of this revised NESHAP, fugitive dust emissions from primary lead processing

facilities will not result in exposures levels above the NAAQS. Since the risk levels are much lower than we had estimated at proposal, and since we are promulgating specific work practice requirements to minimize fugitive dust emissions, we have determined that the proposed fenceline monitoring requirement is not necessary to show compliance with this NESHAP. Furthermore, there are already several monitors nearby that measure ambient lead levels and that should provide sufficient indication of whether fugitive lead emissions have been sufficiently reduced.

In recent rules promulgated under section 112 and 129, the EPA has revised certain terms and conditions of the affirmative defense in response to concerns raised by various commenters. The EPA is adopting those same revisions in this rule. Specifically, the EPA is revising the affirmative defense language to delete ''short'' from 63.1551(a)(1)(i), because other criteria in the affirmative defense require that the source assure that the duration of the excess emissions ''were minimized to the maximum extent practicable.'' The EPA is also deleting the term ''severe'' in the phrase ''severe personal injury'' in 63.1551(a)(4) because we do not think it is appropriate to make the affirmative defense available only when bypass was unavoidable to prevent severe personal injury. In addition, the EPA is revising 63.1551(a)(6) to add ''consistent with good air pollution control practice for minimizing emissions.'' The EPA is also revising the language of 63.1551(a)(9) to clarify that the purpose of the root cause analysis is to determine, correct, and eliminate the primary cause of the malfunction. The root cause analysis itself does not necessarily require that the cause be determined, corrected or eliminated. However, in most cases, the EPA believes that a properly conducted root cause analysis will have such results. In addition, the EPA is revising 63.1551(b) to state that a written report must be submitted within 45 days of the initial occurrence of the malfunction and that the source may seek an extension of up to an additional 30 days.

V. Summary of Significant Comments and Responses

In the proposed action, we requested public comments on all aspects of the proposal, including our residual risk reviews and resulting proposed standards, our technology reviews and resulting proposed standard, and our proposed amendments to delete the startup and shutdown exemptions and the malfunction exemption and to establish an affirmative defense for malfunctions.

We received written comments from 16 commenters. Our responses to some of the significant public comments are provided below. Responses to the comments that are not in the preamble have been placed in the docket. See *Summary of Public Comments and Responses for Primary Lead Processing NESHAP* (October 2011), for summaries of other comments and our responses to them.

A. Timeline for Compliance

Comment: Two commenters opposed the compliance timing and supported extending the compliance date beyond two years for several reasons. One commenter stated that according to the time line in the proposed rule, the facility will operate in its current form for only a few months after the compliance date of the rule. This creates a dilemma for the State and facility in terms of implementation, planning, resources and compliance. The commenter suggested that the implementation and attainment schedules for this MACT rule should correspond to those of the 2008 NAAQS.

One commenter identified three provisions they suggest could be used to allow more than 2 years for compliance: (1) 112(i)(3)(A) establishes 3 years for compliance for section 112 standards, (2) 112(i)(5) allows exemption for up to 6 years for facilities demonstrating 90 percent reduction in HAP prior to first proposal of a section 112(d) standard, and (3) 112(h)(3) allows an alternative means of compliance in some circumstances. The commenter stated that the import of the underlying statutory authority relates to the compliance period for existing sources. Under the EPA practice, a three-year compliance period applies to section 112(d) MACT standards, while a two-year period applies to section 112(f) standards. Although the EPA seems to have reflexively applied the section 112(f) period, this approach is not foreordained in the present circumstances. Specifically, section 112(i)(3)(A), which allows a three-year compliance period for any section 112 standard, merits consideration in light of the various proposed MACT standards, including a plant-wide section 112(d)(6) standard. With regard to the authority under section 112(i)(5), the commenter states that emissions have been reduced from 140 tons in the year 2000 to less than 14 tons in 2009, representing a decrease of over 90%. With regard to section 112(h)(3), the commenter believes that the two year compliance period has serious adverse economic effects on the company and the new hydrometallurgical process can be considered an alternative means of emission limitation.

The commenter also stated that the circumstances of this case present a unique challenge in determining an appropriate compliance deadline for a new primary lead smelting MACT standard. The commenter stated that there were several differences from the typical MACT rulemaking: Instead of multiple sources within a category, there is only one facility in the category; by virtue of a federally enforceable consent decree, the facility must terminate its present operations by April 30, 2014; and assuming a final rule issues on October 31, 2011, and a two-year compliance deadline, the compliance period would be at most six months prior to stoppage of many of the current operations. If forced to achieve compliance that would last only for such a short period, the facility would face severe economic hardship that could jeopardize its ability to finance and to build a new hydrometallurgical lead production process that would largely eliminate lead emissions. These circumstances raise questions as to the legal necessity as well as the feasibility and practicality of implementing a two-year compliance deadline.

Further, it was incorrectly assumed that a two-year compliance period is consistent with the schedule of required actions contained in the Consent Decree, when the opposite is true. Requiring MACT standard compliance six months before the required termination of Doe Run's existing lead smelting seriously erodes several Consent *Decree goals:* Introducing a new hydrometallurgical lead production process that minimizes lead emissions, assuring continued primary lead production in the United States, and promoting the development of the most technologically advanced lead production process in the world.

Finally, the commenter stated that the primary lead RTR proposal effectively accelerates the compliance date for the lead NAAQS for the Doe Run facility. According to the commenter a two-year compliance timeframe relies, in part, on the various steps that must be undertaken to implement a plan to monitor lead concentration in air. But this reliance is also misplaced because it requires Doe Run to comply with the new Lead NAAQS in 2013, or more than two years before the Lead NAAQS itself requires compliance. No statutory authority supports such accelerated compliance for the lead NAAQS or preemption of the SIP process. In short,

the two-year timeframe rests on faulty grounds: Factually, it is inconsistent with the Consent Decree requirements, and legally, it unlawfully attempts to speed up the previously-established compliance timeframe for the lead NAAQS.

Response: Section 112(i)(3) establishes the compliance timeframe for any standard issued under section 112 for existing sources and provides that the compliance date shall be as expeditiously as practicable but no later than 3 years following the effective date of the standard. Section 112(f)(4), however, expressly provides more specific requirements for standards issued under section 112(f) and thus for section 112(f) standards those more prescriptive requirements govern in place of the compliance requirements in section 112(i)(3). Specifically, section 112(f)(4) provides that a source cannot emit an air pollutant in violation of a standard issued under subsection (f) except that the standard will not apply until 90 days after its effective date. It also provides that the Administrator may grant a waiver for a period of up to 2 years from the effective date if necessary for the installation of controls and if measures will be taken in the interim to ensure public health is protected from imminent endangerment. Thus, for standards applicable to the furnace and refinery area emissions and the work practice standards to address fugitive emissions, which were issued under section 112(f), the compliance period may not exceed two years from the effective date of the standard. We are providing 90 days for compliance with the work practice standards and two years for compliance with the standards applicable to the furnace and refinery area stacks.

The main stack emission limit, proposed under 112(d)(6), is subject to the section 112(i)(3) compliance provisions. We are establishing an emission standard of 0.97 lb Pb/ton of lead produced that would replace the existing standard of 1 lb Pb/ton of lead produced. This standard is based on the level of emissions that the source is already achieving in practice and thus no additional controls would be needed to meet that emission limit for the main stack. For that reason, we are requiring compliance with the new limit for the main stack within 60 days of the effective date of this final rule as this timeframe constitutes compliance ''as expeditiously as practicable.''

Concerning section 112(i)(5), the provision only applies to standards promulgated pursuant to section 112(d) (and not 112(f)) and also only where a source achieves a 90% reduction (95% in the case of HAPs that are particulate matter) prior to the proposal of the section 112(d) standard. Thus, this provision does not apply to the standards established under 112(f) in this final rule. With regard to the emission standard proposed for the main stack, stack test data indicate that the main stack emissions are substantially higher than the 14 tons per year value cited by the commenter. Based on performance test data, the facility has not achieved the reductions in emissions required to apply the alternative compliance dates in section 112(i)(5).

Section 112(h)(3) allows the Administrator through notice and comment rulemaking to accept an alternative means of emission limit in place of a work practice standard established under 112(h)(1) if the owner or operator of a source establishes that such alternative means will achieve reductions at least equivalent to those that would be achieved by the work practice standard. It is unclear precisely what the commenter is suggesting with regard to this provision. However, it seems they may be suggesting that the new hydrometallurgical process that they plan to install after they close the pyrometallurgical processes should be considered an alternative means of compliance with the work practice standard. It is unclear how this process would address the emissions covered by the work practice standards we are establishing which are intended to address current fugitive dust emissions from the facility. Those emissions are almost exclusively from lead entrenched in open areas and the installation of a new process for lead processing would not appear to affect those emissions. Moreover, we understand that the new hydrometallurgical process won't be operational until sometime after the compliance date for the work practice standards we are requiring. Thus, even if that process would address in whole or in part the fugitive dust emissions addressed through the work practice standards, it would not be an appropriate substitute in the absence of being able to achieve the necessary reductions within the compliance period. We note that our determination here does not preclude Doe Run from submitting additional information that may further support a demonstration under section 112(h)(3) and for which we could take further action in a separate rulemaking.

As to the concerns the commenter raises about this situation being unique, we do not disagree. However, the statute is clear that the maximum compliance period for standards issued pursuant to section 112(f) is two years. The commenter submits no facts or information that supports a legal basis for providing a longer period for compliance for the refining and furnace area stack limits and for the work practice standards to minimize fugitive dust emissions.

Finally, we note that the Lead NAAQS does not apply to a specific facility but rather is a level that must be met within the designated nonattainment area. However, we recognize that Doe Run is the only stationary industrial source creating the Jefferson County lead nonattainment area and the reductions required under the rule will help bring the area into attainment with the lead NAAQS. However, this regulation does not preempt the SIP process; the State of Missouri is still required to submit a state implementation plan demonstrating how the area will attain and maintain the lead NAAQS. In doing so, the State may rely on any reductions required under this regulation. Finally, we note that this regulation does not ''speed up'' the compliance timeframe for meeting the Lead NAAQS. The CAA requires areas to attain the various NAAQS as expeditiously as practicable, but no later than specified dates. For the 2008 lead NAAQS, areas are required to attain the standard as expeditiously as practicable, but no later than December 31, 2015. The Act not only contemplates but requires, if practicable, for areas to attain the 2008 lead NAAQS earlier than December 31, 2015.

Additionally, we are not requiring fenceline monitoring as part of the final NESHAP amendments. Therefore, the commenter's concerns related to potential conflict between monitoring for the NAAQS and this NESHAP are no longer relevant.

Comment: One commenter stated that the proposed emission standards and ambient standard had negative implications for determining compliance under the proposed two-year compliance period and the ''plantwide reductions'' that are ''required under section 112(f)(2).'' 76 FR at 9437/1. According to the commenter, the only plant-wide reduction proposed in the rule is the plant wide limit of 0.22 pounds per ton produced while the other two new numerical standards are the 0.91 tpy limit for furnace area and refining and casting operations and the 0.15 $\mu g/m^3$ limit for ambient lead concentrations.

The commenter stated that the three proposed numerical standards present a confusing regulatory regime as to which standard ultimately controls for determining compliance. If, for

example, Doe Run achieves an aggregate emission of 0.22 lb/ton on a facility wide basis but exceeds 0.91 tpy for its furnace and refining and casting operations, would it be in compliance?

Of the three numerical standards, the commenter stated that only the 0.91 tpy limit can arguably be linked to Section 112(f), and even that is unclear. The 0.91 tpy standard is derived from the Lead NAAQS risk analysis. Despite this starting point, this standard is subsumed in the proposed 0.22 lb/ton plant-wide limit which arose under the section 112(d)(6) technology review, adjusted for ''variability in the operations and emissions.'' While an effort is made to differentiate the components of the 0.22 lb/ton standard as to which portion fits under what statutory authority, this single plant-wide emission standard rests on the section 112(d)(6) review. Although not explicitly stated, this plant-wide standard offers more than an ample margin of safety.

Response: We have decided not to include a facility-wide limit that would include the refining and furnace area stacks as well as to the main stack. Instead, the 1.2 tpy emissions standard we are promulgating under section 112(f) will apply to combined emissions from the refining and furnace area stacks. The 0.97 lb/ton emission standard that we are promulgating pursuant to section 112(d)(6) will replace the 1.0 lb/ton limit in the original MACT rule and will apply to the same sources subject to the limit in the original MACT rule. Additionally, we have eliminated the fenceline monitoring requirement from the final rule. These changes should alleviate the regulatory confusion that could arise over the limits in the proposal. Furthermore, we believe a plant-wide limit is not necessary to address the residual risk and technology review requirements of the Act. As provided in the preamble to the proposed and final rules, we evaluated each of the emission stacks separately to determine whether additional controls are necessary under section 112(f) or 112(d)(6) and a plant-wide limit is not needed under either of those statutory requirements.

B. The EPA's Authority Under Section 112 of the Clean Air Act

Comment: One commenter stated that the modification to the applicability provision does not comport with how smelting is defined and used and that the source category listing was intended to cover smelting only, not other processes. The commenter lists several issues supporting this position:

- The opening phrase of the first sentence ''The Primary Lead Smelting source category,'' describes and limits ''any facility'' to mean those involving smelting; and the ''includes, but is not limited to'' language does not apply to any lead producing process, but only to ''the following smelting processes.''
- The list of processes identified all involve pyrometallurgical activities: Sintering process, blast furnace, electric smelting furnace, reverberatory furnace, slag fuming furnace, drossing kettles, and dross reverberatory furnace.
- The plain meaning of that language evidences intent to cover any and all types of pyrometallurgical processes for producing lead but shows no attempt to encompass other, as yet unknown, lead production processes.
- Isolating the phrase ''including, not limited to'' from the company it keeps to justify an expansive reading goes well beyond the meaning of the listing as a whole and thus cannot stand.

The commenter also stated that the proposed change in applicability is inconsistent with the statutory structure for formulating source categories: ''To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C of this subchapter.'' The commenter cited several instances in the statute where Primary Lead Smelting is referred to as a pyrometallurgical process. In summation, the commenter states that the statutory directive of CAA section 112(c)(1) to assure consistency between a source category definition and how the same terms are used in other parts of the Act demonstrates that the statutory and regulatory use of ''primary lead smelting'' and ''primary lead smelter'' was consistently designed to cover only pyrometallurgical processes. The EPA's assertion that the originally formulated primary lead smelting source category has a ''broader definition'' is inconsistent with the original source category language and the pyro-oriented definitions applied to primary lead smelting/smelter found throughout the statute and regulations.

The commenter also stated that the EPA's effort to recast the primary lead smelting category is barred by the failure to show a major source would be present. The new hydrometallurgical process bears no resemblance to the current pyrometallurgical process, other than feedstock and end product. The new process will have drastically reduced lead emissions and is presented as a minor source in the Doe Run Air Construction Permit Application for the New Lead Technology submitted to the Missouri Department of Natural Resources.

Response: Section 112(c)(1) describes the process for creating the source category list. To the extent that the commenter is concerned that the source category listing for primary lead was not issued consistent with the requirements of section 112(c)(1), such claim is untimely. We disagree with the commenter that the source category description must be read to be limited to pyrometallurgical processes. The source category description was intended to include all processes used to produce lead metal from ore concentrates, as evidenced by the first sentence of the category description. While it is true that at the time of the source category listing, the hydrometallurgical process described by the commenter did not exist, the language left open the possibility that other lead metal production processes might be developed in the future and would be covered under the source category listing.

Although, the source category name in the 1999 NESHAP was ''primary lead smelting'' rather than ''primary lead processing,'' it was given that title because, at that time smelting was the only technology used to process lead ore into lead metal. However, the three-word title should not be read as limiting the broader language in the description of the source category, which provides the full evidence of EPA's intent of what should be included in the source category.

Recently, during the development of this RTR rulemaking, we became aware of a new primary lead processing and production technology (*i.e.,* hydrometallurgical process). It is our understanding that even after this new technology is in place, the facility plans to continue operating some of the same thermal processes in use now and subject to the NESHAP (such as refining and casting) which continue to have the potential to emit significant amounts of lead. We also note that this facility will continue to have the potential for fugitive emissions. For these reasons, we conclude that it is appropriate and necessary to update the title for the MACT standard and the applicability section of the standard, consistent with the description of the listed source category, to ensure these emissions points continue to be subject to emissions standards. However, it is also important to note that the rule being promulgated today has no requirements that apply to the hydrometallurgical processes themselves, since this process currently does not exist at this facility.

As noted in the response to comments, if a new process such as the hydrometallurgical process is developed and put into use in the future, then EPA would consider what standards to propose for such process after such process is operational.

We believe section 112(d)(1) provides the authority for this revision to the standard. That provision requires EPA to ''promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources'' of the hazardous air pollutants listed in section 112(b)(1). Because EPA's initial promulgation of the MACT standard did not fully describe the source category, and thus did not regulate all potential sources within the source category, we believe it is now appropriate to revise the applicability provision to fully cover the sources as provided under the source category listing.

Comment: A commenter stated that the proposed rule does not suggest that the new lead production processes should be listed as area sources. If the EPA could make the necessary ''adverse effects finding'' for including a hydrometallurgical lead production process as an area source, a separate NESHAP would be required for a new area source. The EPA lacks authority to subsume a new area source into the Primary Lead Smelting major source category, as it would require in the proposed rule. Therefore, the EPA must show that either Doe Run's new lead production process or the entire Doe Run facility after the new process is operational would or could emit more than 10 tpy of lead if the facility is to remain a major source category and the proposed rule offers no documented evidence that Doe Run's hydrometallurgical lead production process or the Herculaneum facility after the new process becomes operational would constitute a major source. The commenter contended that neither the new process nor the entire Herculaneum facility would be a major source. Plant-wide emissions at Doe Run's facility after the new process becomes operational are estimated to approximate 0.65 tpy. Absent the presence of a major source at Doe Run's facility, the new lead production process cannot be treated as a major source category.

Response: As explained in detail elsewhere, the EPA has the authority to impose additional requirements on emission points already subject to an emission standard and to impose requirements on previously unregulated emission points in performing a risk and technology review. The EPA has exercised that authority here by establishing emission limitations for activities previously only subject to work practice requirements. The commenter's arguments to the contrary notwithstanding, the revised applicability definition will result in a source category containing a major source, the Doe Run facility. Doe Run is currently a major source of lead emissions and will be a major source of such emissions on the date by which it must initially comply with the newly established emission limits for refining activities. Thus, regardless of the level of its emissions following conversion to the hydrometallurgical process, Doe Run must meet the newly established emission limits by the specified date(s). As noted elsewhere, a new hydrometallurgical process is not subject to an emission limit under the existing MACT standard as it now exists or following the changes resulting from this rulemaking; we would consider an appropriate emission limit for the hydrometallurgical process once that process is a demonstrated technology.

Comment: Another commenter stated that the EPA appropriately proposes to update the applicability of the MACT to cover Doe Run's new type of facility.

Response: We agree with this comment.

Comment: Two commenters stated that the EPA cannot use section 112(f) authority to establish an ambient air standard because this type of standard is not an ''emission standard.''

The commenters stated that the NAAQS does not fit within the meaning of ''emission standard'' as used in CAA sections 112(d)(6) or (f)(2), the EPA's stated authority for the proposed rule. Section 112(f)(2) is entitled ''Emission standards'' and the second sentence, where the ''ample margin of safety'' factor is found, has ''emission standard'' as its subject; these specific references clarify the use of ''standards'' elsewhere in the subsection means ''emission standard.'' Likewise, section 112(d)(6) gives the Administrator authority to revise ''emission standards.'' Both subsections limit the EPA's rule-promulgating authority to setting ''emission standards.''

According to commenters, Congress defined ''emission standard'' in CAA section 302(k) to ''mean a requirement established by the * * * Administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source * * * and any design, equipment, work practice or operational standard promulgated under this chapter.'' The language can only be reasonably read to allow a standard applicable to emissions from specific source(s). The lead (or any other) NAAQS, by definition, is not targeted to specific source(s), but applies generally to the national ambient air. See, *e.g.,* CAA section 109(a)(1)(A) (''regulations prescribing a national primary ambient air quality standard * * * for each air pollutant'').

The commenters stated that the contrasting language highlights that the lead NAAQS does not qualify as an emission standard within the meaning of section 112. The NAAQS addresses ambient air rather than emissions from a source, and as a result the NAAQS does not put any limits on the quantity, rate, or concentration of emissions from a particular source or on its operation, maintenance, design, or work practices, all of which are central to the section 112(f)(2) mandate or on the practices, processes, and control technologies related to sources central to section 112(d)(6). Further, a NAAQS limits ambient air lead without regard to source category or types of sources, while the MACT standards are particularized to control emissions at specific sources. Thus, the primary lead smelting emission standards differ from the secondary lead smelting emission standards, but the same lead ambient air standards apply throughout the country without regard to such distinctions. In short, the lead NAAQS does not fit the meaning of ''emission standard'' as used in section 112 and therefore cannot be properly used as the MACT standard here.

One commenter stated further that this error is not cured by the wording of proposed section 63.1544(a), which states: ''No owner * * * shall discharge or cause to be discharged into the atmosphere lead compounds that cause the concentration of lead in air to exceed 0.15 $\mu g/m^3$ on a 3-month rolling average measured at locations approved by the Administrator.'' As such, proposed section 63.1544(a) measures ambient air levels for compliance (''concentration of lead in air * * * at locations'') in what appears to match the source monitoring of ambient air required for the Lead NAAQS. See 73 FR at 67052, section 50.16(a) and at 67059, section 58.10; see also 76 FR at 9436/1 (proposing that compliance ''be demonstrated using a compliance monitoring system''). As such, proposed section 63.1544(a) does not limit the quantity, rate, or concentration of emissions from a specified source or take into account developments in practices, processes, and control technologies. Compare 40 CFR

63.1544(a)(2010) (requiring ''manual that describes in detail the measures that will be put in place to control fugitive dust emissions from the sources''). Measuring ambient air at locations presumably near the source does not fall within the standards allowed by CAA section 112, and, in any event, is redundant to the same monitoring and limitations already established under the Lead NAAQS. Consequently, the proposed rule exceeds the statutory authority granted by section 112, and therefore cannot be adopted.

One commenter stated that the proposal requests comments on a work practices standard operating procedure (SOP) alternative to ambient air monitoring. As opposed to using the Lead NAAQS, which is not an emission standard under Section 112, the alternative SOP proposal is consistent with the MACT directive that emission reductions be tied to specific sources.

One commenter stated that the proposed ambient lead standard is procedurally flawed because the EPA fails to explain the legal basis for imposing such a standard under section 112(f). The agency's legal authority is of central relevance to this aspect of the proposal and the failure to clearly describe the legal basis for the standard violates the EPA's obligation under section 307(d)(3)(C) to set forth the ''major legal interpretations'' that underlie the proposal.

Response: The commenters mistake the purpose of the fenceline monitoring requirement in the proposed rule. The proposed rule established emissions standards from the main, furnace area, and refinery operations stacks and further provided that fugitive dust emissions would need to be addressed by work practice standards (as is allowed under section 112(h)(1)). Finally, we proposed a fenceline monitoring requirement to ensure that the work practice standards adequately address fugitive dust emissions consistent with the requirements of section 112(f). However, we have eliminated the fenceline monitoring requirement in the final rule. Instead, we are specifying work practice standards to minimize fugitive dust emissions. Because we are not requiring fenceline monitoring in this final rule, the commenter's concerns related to redundant monitoring requirements need not be addressed.

We disagree with the suggestion that we do not provide the legal basis for our proposed rule. The preamble clearly explains that we are addressing residual risk for this source category under section 112(f) and clearly explains the rationale for the proposed rule and the basis for the proposed requirements. (See 76 FR 9412–9414 for a discussion of the statutory authority underlying the proposed revisions to the standard.) With regard to fugitive dust emissions, we are establishing a requirement for work practice standards consistent with section 112(h)(1) in lieu of an emission standard because these fugitive dust emissions, which are predominantly from materials handling and roadways cannot be captured and vented to a stack for which we could establish an emission limit.

Comment: One commenter stated that the CAA limits the EPA's ability to regulate pollutants subject to NAAQS (''criteria pollutants'') to that regime and does not allow supplemental (or supplanting) regulation of them under NESHAP. The commenter cited CAA section 112(b)(2) that states in relevant part: ''No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section'' with certain exceptions not relevant here. Section 7408(a) provides the statutory authority for setting NAAQS. Also, CAA section 112(b)(7) removes elemental lead from consideration as a HAP. According to the commenter, the prohibition is not only clear, but also expansive: The statute ''unqualifiedly prohibits listing a criteria pollutant as a HAP, that is, regardless of the reason.'' *Nat'l Lime Ass'n* v. *EPA,* 233 F.3d 625, 638 (DC Cir. 2000).

Response: As we recognized in the preamble to the proposed rule, under section 112(b)(7) elemental lead may not be listed as a HAP under section 112 and the references to ''lead'' in the proposed rule referred to ''lead compounds'' which are expressly listed as a HAP in CAA section 112(b)(1). 76 FR 9412. Because lead compounds are a listed HAP, we are required to regulate them under section 112, as we did when we established the original MACT standard for primary lead in 1999. 64 FR 30194. The lead emitted from primary lead processing is lead compounds with elemental lead present only in trace amounts.[5] The commenter did not provide any data to refute this. Thus, we disagree with the commenter that we are attempting to regulate in contravention of section 112(b)(7) in this action.

The *National Lime* opinion cited by the commenters addressed a different issue than the one being at issue here. In that case, the issue was whether the EPA could use a NAAQS pollutant (particulate matter) as a surrogate for HAP metal emissions. While certain HAP listed in 112(b)(1) are considered particulate matter, ''particulate matter'' is not listed on the 112(b)(1) list. In that case, the court rejected the argument by the National Lime Association that the EPA was regulating particulate matter ''through the back door.'' In the present situation, the EPA is not regulating lead ''through the back door'' in this rulemaking.

Comment: One commenter stated that the EPA unlawfully refused to set a standard for organic HAP. According to the commenter, the EPA must set an emission standard for the organic HAP listed on the section 112(b)(1) list that this source category emits. Specifically, the commenter argues that:

> ''[w]hen EPA performs a section 112(d)(6) review, it must consider the ongoing legality and effectiveness of the existing standard. Explicitly, in the current rulemaking EPA must ''review, and revise as necessary'' the existing MACT standard. 42 U.S.C. section 7412(d)(6). It is clearly ''necessary'' for EPA to close inherently unlawful gaps in the original MACT, by setting a standard for an uncontrolled HAP. Indeed, EPA has recognized the need and done this during its section 112(d)(6) review in its recent rulemaking for Marine Tank Vessel Loading Operations and Group I Polymers and Resins where it proposed a standard for previously uncontrolled subcategories of these sources. *See* Proposed Rule, 75 Fed. Reg. 65068, 65115, 65106 (Oct. 21, 2010). EPA has no legal basis for failing to set a MACT standard now for the uncontrolled HAPs for the primary lead source category.''

Response: We disagree with the commenter that section 112(d)(6) mandates that the EPA must correct any deficiency in an underlying MACT standard when it conducts the ''technology review'' under that section. We believe that section 112 does not expressly address this issue, and the EPA has discretion in determining how to address a purported flaw in a promulgated standard. The ''as necessary'' language cited by the

[5] Harrison, R.M. and Williams, C.R. (1981). Environmental Science and Technology, Vol. 15:10, p. 1197–1204.; Ohmsen, G.S. (2001). Journal of the Air and Waste Management Association, Vol. 51, p. 1443–1451.; Uzu, G., Sobanska, S., Sarret, G., Sauvain, J.J., Pradère, P., and Dumat, C. (2011). Journal of Hazardous Materials, Vol. 186, p. 1018–1027.; Spear, T.M., Svee, W., Vincent, J.H., and Stanisich, N. (1998). Environmental Health Perspectives, Vol. 106:9, p. 565–571.; Czaplicka, M., and Buzek, Ł. (2011). Water, Air, & Soil Pollution, Vol. 218, p. 157–163.; Sobanska, S., Ricq, N., Laboudigue, A., Guillermo, R., Brémard, C., Laureyns, J., Merlin, J.C., Wignacourt, J.P. (1999). Environmental Science and Technology, Vol. 33, p. 1334–1339.; Harrison, R.M. and Williams, C.R. (1983). The Science of the Total Environment, Vol. 31, p. 129–140.; Batonneau, Y., Bremard, C., Gengembre, L., Laureyns, J., Maguer, A.L., Maguer, D.L., Perdrix, E., and Sobanska, S. (2004). Environmental Science and Technology, Vol. 38, p. 5281–5289.; Foster, R.L. and Lott, P.F. (1980). Environmental Science and Technology, Vol. 14:10, p. 1240–1244.

commenter must be read in the context of the provision, which focuses on the review of developments that have occurred since the time of the original promulgation of the MACT standard and thus should not be read as a mandate to correct flaws that existed at the time of the original promulgation. In several recent rulemakings, we have chosen to fix underlying defects in existing MACT standards under sections 112(d)(2) and (3), the provisions that directly govern the initial promulgation of MACT standards (see National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566). (We note that the commenter incorrectly states that we revised those standards under 112(d)(6)). We believe that our approach is reasonable because using those provisions ensures that the process and considerations are those associated with initially establishing a MACT standard, and it is reasonable to make corrections following the process that would have been followed if we had not made an error at the time of the original promulgation.

Nevertheless, based on our review of the commenter's 2009 petition and their additional comments on this proposed rulemaking, we agree that the Primary Lead Smelting NESHAP should have included an emission standard for organic HAP. We have evaluated available data and believe that we need additional data in order to set an emission standard for organic HAP that is representative of current operations and emissions. We intend to collect the needed data and propose a MACT emission standard under section 112(d)(2) and (3) of the CAA. Accordingly, we are not taking final action on the 2009 petition with respect to the issue of setting a standard or standards for organic HAP and will address that petition once we have gathered the necessary data.

C. Primary Lead Processing Risk Assessment

Comment: One commenter stated that the EPA failed to consider or account for cumulative risk and that there is no rational or scientific basis to dismiss consideration of the cumulative risk of exposures to HAPs due to uncertainties. The commenter urged that these uncertainties require protective action rather than inaction. The commenter stated that the EPA's Science Advisory Board (SAB) in May 2010 urged the EPA to use the RTR rulemaking process to do this as well as perform a sensitivity analysis to identify the major uncertainties in both the human health and ecological risk assessments. According to the commenter, the SAB and numerous other scientific experts have developed, and are in the process of developing, cutting edge methods to perform these assessments and that the EPA, as the lead environmental agency of the United States, has a responsibility to show leadership in this process. It should rely on the significant information already available and also use the current and future RTR rulemakings to further advance this process.

The commenter stated that it could be done on a site-specific basis or for the industry as a whole. Uncertainty in estimates of HAP in ambient air has been characterized, so the data available from the National-Scale Air Toxics Assessments (NATA) would allow a defensible estimate of what might be expected from other sources.

Response: We disagree with the commenter that our risk assessments do not consider cumulative risk. We note that our assessment of cancer risks is, in fact, cumulative, summing the risks associated with all carcinogens emitted by the facility. Similarly, the use of the target organ specific hazard index (TOSHI) for chronic non-cancer effects evaluates the cumulative effects of HAP on a given target organ. Further, our assessment for Primary Lead Processing is cumulative in that it considers all emission points within the fenceline (since they are all covered by the MACT). Moreover, the level of the lead NAAQS, which we used as the metric for defining unacceptable risk, was set based on all air-related exposures in its derivation and thus is also a cumulative standard. We note that for the present rulemaking, our consideration of cumulative risks for the Doe Run facility is the same as that for the industry as a whole since Doe Run is the only facility within the source category.

We further disagree with the commenter's assertion that a comprehensive quantitative assessment of risks from all sources outside the source category is required under the statute. If such were in fact the case, the task of completing such a requirement would take an interminable length of time. Instead, to provide the quantitative risk information necessary to inform RTR regulatory decisions, the EPA conducts a comprehensive assessment of the risks associated with exposure to the HAPs emitted by the source category (*i.e.,* those emissions that can actually be affected by the specific rulemaking) and supplements that with additional information about other possible concurrent and relevant risks that is readily available. In some cases, we have additional information about HAP emissions that are outside the scope of the particular rulemaking but within the boundaries of the subject facilities. In other cases, we may have ambient HAP monitoring data that can be considered as part of the regulatory decision-making. In still other cases, we may have very little additional risk information that can be considered. In all cases, however, when we consider additional information about risks, we also consider its attendant uncertainties, and information which carries significant uncertainties generally carries much less weight in the overall regulatory decision.

All of the quantitative risk assessment information about HAP emissions from the source category under consideration is also considered in the manner prescribed by the decision framework set forth by the CAA for residual risk decision-making (*i.e.,* the Benzene decision framework), and this means that the general guidelines of risk acceptability have been developed in a way that they already take into account the impossibility of accurately quantifying the health risks posed by outside forces on every individual in the population. They do this by noting that the guidelines apply in ''the world in which we live,'' a world which is acknowledged to be ''not risk-free,'' but rather a world which is full of risks, many of which can simply not be quantified. This acknowledgment allows the EPA to make risk-based decisions by focusing on the risks associated with the emissions that are themselves the subject of regulation being considered, and not get distracted by the daunting task of assessing all the other concurrent potential risks that may or may not be relevant and can't be impacted by the regulation in question anyway.

Comment: Two commenters took issue with the modeling methodology used for the RTR proposal and disagreed with the risk results based on a number of concerns.

One commenter stated that the RTR modeling characterized the maximum air lead concentrations near the facility to be fifty times the 2008 NAAQS which is inconsistent with both recent air quality monitoring data and Missouri's 2007 attainment demonstration modeling and stated that the proposed RTR modeling overestimated the maximum air lead concentration by at

least a factor of five. The commenter stated that the inaccuracies of the EPA's proposed modeling analysis will be in conflict with future baseline and attainment demonstration modeling based on more accurate data, especially since the RTR proposes to correlate the MACT standard with the 2008 NAAQS. The commenter recommended that the EPA remodel this facility using higher quality input data that are more representative of current operations at the Herculaneum facility, to obtain results that better reflect the actual monitored 3-month lead concentrations. Alternately, the commenter stated that the EPA should either defer to appropriate air quality monitoring information or to the modeling run used for the 2007 SIP revision attainment demonstration as the basis for this RTR. Some commenters also suggested using AERMOD modeling followed by LEADPOST, rather than using HEM–3 to ultimately calculate 3-month rolling average lead concentrations.

Two commenters identified specific issues with regard to the modeling approach and input data including:

- The ratio of modeled results to monitored data should not exceed a factor of two. The commenter provided specific corrections and analysis of data.
- The NAAQS attainment demonstration model developed by the State of Missouri and the RTR modeling, although conducted for different purposes, are both based on compliance with the same standard for the same geographic location. Therefore, the output of both dispersion models, whether for residual risk assessment or SIP development, should reflect the maximum ambient air lead concentration. The commenter stated that any data limitations should be addressed with input from the commenter.
- Improvements from the 2007 SIP for the fugitive emissions from the sinter plant and blast furnace building do not appear to be reflected in the run script of the model, resulting in concentrations up to fifty times the NAAQS. The commenter stated that actual monitoring data from 2010 show a maximum three-month average ambient air concentration of 1.12 μg/m^3 at the Main Street site. This actual monitored value is in line with the MDNR modeled estimate from the 2007 SIP revision and is recommended to be the basis for the risk assessment.
- The EPA did not provide a modeling protocol for their dispersion modeling, or all of the modeling inputs, post processing and other data in the docket for public review. Therefore, a complete, replicable public review of the model and assessment of the proposed RTR could not be made. The commenter identified several specific modeling parameters and data elements that were not correctly applied during the proposal modeling run which could have significantly affected the results including model control options, run script parameters, volume sources modeled as point sources, inaccurate fenceline/boundary locations, incorrect elevations for sources and receptors, and old census data information for receptor centroids.

Response: Because of the availability of newer emissions data, more detailed site-specific meteorological data, as well as updated facility boundary and other information provided by Doe Run in comments on the proposed rule, we have remodeled the facility with these newer data. We remodeled using AERMOD in the default mode to estimate monthly lead concentrations, and we used the building and particle data submitted by one commenter to model building downwash and plume depletion. We used the LEADPOST processor to calculate 3-month rolling averages. In addition, using the updated facility boundary information, the EPA also removed census blocks that would now be considered onsite. The methods and results of this modeling effort can be found in the document: Residual Risk Assessment for the Primary Lead Smelting Source Category, which is available in the docket for this rulemaking. The EPA notes that the results of this modeling effort are similar to results submitted by the Doe Run Company to the State as part of a SIP (this Doe Run modeling effort was also submitted to the EPA as part of its public comments). Moreover, the EPA notes that a comparison of modeled lead concentrations at the sites of six lead monitors are within 50 percent of measured concentrations at those monitors. These results are similar to a model-to-monitor comparison submitted by Doe Run in its public comments.

We note that the docket included all of the input files and documentation needed to reproduce the modeling that was performed for the proposal risk assessment.

Comment: With respect to using the NAAQS to evaluate potential multipathway risks from lead, one commenter stated that the risk assessment used to set the NAAQS was based on quantitative studies of young children and that while ''the Lead NAAQS obviously applies to all ages, that was a qualitative risk management decision made as a matter of policy'' and that ''the task at hand is to provide a quantitative risk assessment of the maximum non-adverse facility-level emissions rate for all ages, which cannot be done on the basis of a risk assessment that studied children only.

Response: The lead NAAQS was a public health policy judgment considering the available health evidence and risk analyses as well as the uncertainties associated with the health evidence and risk analyses. We disagree with the commenter that the lead NAAQS cannot be used in a quantitative manner. The review of the lead NAAQS clearly resulted in a quantitative standard: 3-month maximum lead concentration not to exceed a level of 0.15 μg/m^3. This standard was set to protect public health, including the health of sensitive populations, with an adequate margin of safety. As the commenter notes, the lead NAAQS applies in all areas of the United States and is meant to protect the public health with an adequate margin of safety regardless of the age of the individuals living in a particular area.

Comment: One commenter stated that rather than finalizing this proposal as it stands, the best available science directs the EPA to set a residual risk standard that incorporates protective health benchmarks and assures that children living near the facility will not face an unacceptable neurological effect, such as the loss of IQ points. This includes protecting children against a blood lead level change of 1.0 μg/dL or more, a benchmark used by California for the blood lead level change that is associated with a child's loss of one IQ point. Because there is no safe level of lead exposure and because lead persists in the environment, resulting in reservoirs in soils and dusts, the EPA has an obligation to control emissions from this source category promptly and in a precautionary manner. The commenter stated that the EPA should consider requiring zero lead emissions. At a minimum, the EPA should set a standard that would ensure that the ambient air concentration for lead in the local community does not exceed the level of 0.02 μg/m^3 as a one-month average, in order to protect children. As this is the level the Children's Health Protection Advisory Committee had recommended for the lead NAAQS, the EPA must also set additional protections beyond this ambient air limit in order to provide an ''ample margin of safety.''

Response: In order to assess multipathway risks associated with emissions of lead, the EPA compared modeled rolling three month average lead concentrations estimated from emissions from the one source in this category to the NAAQS for lead. As

noted above, we believe that this is a reasonable approach given that the NAAQS is a health based standard set to protect the public health, including the health of sensitive sub-populations (such as children) with an adequate margin of safety. Moreover, the risk assessment supporting the NAAQS considered direct inhalation exposures and indirect air-related multi-pathway exposures from industrial sources like primary and secondary lead smelting operations. We conclude that the level of the NAAQS presents an acceptable level of risk from lead in ambient air. Moreover, we are promulgating emissions limits (for the furnace area and refining operation stacks) to reduce emissions and promulgating specific work practice standards to minimize fugitive emissions to ensure that emissions do not result in exceedances of the NAAQS. As part of our ''ample margin of safety'' analysis, we examined whether there were additional cost effective controls available to further reduce emissions and risks. As explained elsewhere in this notice and in other supporting documents available in the docket, we have not identified any additional cost effective controls to reduce emissions further and provide further risk reductions.

With respect to the California benchmark for protecting children, the EPA has a hierarchy of appropriate health benchmark values. In general, this hierarchy places greater weight on EPA derived health benchmarks than those from other agencies (*http://www.epa.gov/ttn/atw/nata1999/99pdfs/healtheffectsinfo.pdf*). For the reasons provided above, we believe that the lead NAAQS level establishes an appropriate benchmark for addressing the acceptable level of risk and we disagree with the commenter that we should instead use an ambient concentration of 0.02 $\mu g/m^3$ based on a one month average.[6]

Comment: With regard to the source category's emissions of two dozen other hazardous air pollutants, including cadmium and arsenic, one commenter stated that the EPA should determine that this health risk is also unacceptable. With thousands of people exposed to a lifetime risk of cancer above 1 in a million, and with at least 200 exposed to a lifetime risk of up to 30 in a million, the EPA must recognize that this risk is too high for this local community. The EPA should set a standard that would reduce cancer risks to an acceptable level and ensure an ample margin of safety from non-lead emissions.

Response: With respect to cancer risk, section 112 provides for EPA to follow the benzene decision framework for determining acceptability. Under that framework, cancer risk less than 100 in a million is generally considered acceptable, although this is not a bright line and EPA examines a variety of health factors to make its determination. Once we concluded that the risk from non-lead HAP was acceptable, we then considered whether there were additional cost-effective controls that would further reduce risk from the other HAP emitted in order to provide an ample margin of safety. Because the controls for other HAP were the same as the controls for lead, we determined (for the same reason we did for lead) that there were no additional cost effective controls and that the acceptable level of HAP emissions also provided an ample margin of safety.

Comment: One commenter stated that they oppose the use of the lead NAAQS assessment instead of a multi-pathway risk assessment because the lead NAAQS provides an inappropriate level of protection, *i.e.,* the lead NAAQS requires an adequate margin of safety while a residual risk standard requires an ample margin of safety. The commenter stated that a residual risk standard should provide a level of protection that is higher than the NAAQS. Moreover, the commenter noted that the NAAQS is set to protect sensitive populations while residual risk rules are set to protect the greatest number of individuals possible from unacceptable risk. The proposed rule based on the lead NAAQS will not provide as high a level of protection as required by CAA section 112(f)(2).

Response: We disagree with the commenter that the lead NAAQS assessment should not be considered as part of our residual risk analysis because it provides an inappropriate level of protection. The lead NAAQS is set at a level to protect public health, including the health of sensitive populations, most critical for lead, the health of children. That does not suggest that non-sensitive populations are not protected, but rather that the NAAQS is set at a level that will not only protect the general population but also those who are more sensitive to lead exposures. In the proposed rule, the level of the NAAQS, which protects public health with an adequate margin of safety, was used to determine whether or not there was unacceptable risk. Once we determined a level of emissions that results in risks being acceptable, under the two-step residual risk decision process, the EPA then considered whether there were additional controls that might further reduce risk to achieve an ample margin of safety considering cost and feasibility. We did not identify any additional cost-effective controls beyond those that would need to be implemented to ensure an acceptable level of risk. Thus, with regard to the two stack emissions points (the furnace area stack and the refinery stacks) for which we are requiring action to ensure an acceptable level of risk, and for fugitive dust emissions, for which we are specifying work practice standards, we have concluded that there are no additional cost-effective controls and that an ample margin of safety will be provided by the same controls that ensure an acceptable level of risk. Moreover, there are no additional cost effective controls to further reduce emissions from the main stack beyond those controls that are already applied. Therefore, an ample margin of safety will be provided by the current level of control for the main stack. A more detailed presentation of the economic analysis of additional controls for the refining, furnace area, and main stacks can be found in the technical support document, which is available in the docket.

Comment: One commenter stated that the EPA has not appropriately accounted for or prevented environmental risks from lead or non-lead emissions as required by section 112(f)(2)(A). According to the commenter, using the NAAQS to assess ecological risk is problematic and EPA's approach of assuming that ''when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment,'' 76 FR at 9425, is illogical and unlawful. Further, based on the information the EPA has gathered about the local environment around the Doe Run facility, the EPA cannot assume that there would be no effects either to wildlife or to natural resources in the environment either from inhalation or air deposition of HAP emissions, exacerbated by persistence and bioaccumulation. As the EPA's own Scientific Advisory Board has stated: ''The assumption that ecological receptors will be protected if human health is protected is incorrect.'' SAB May 2010 at 48.

Response: The EPA is unaware of any data indicating a direct atmospheric impact of non-lead HAP emitted from this source category on receptors such as plants, birds, and wildlife. Given that there is no information supporting that

[6] This level is well below the background ambient lead levels measured in the area during the SIP process. See docket ID EPA–HQ–OAR–2006–0735–5204.

there is an effect, we find it appropriate to assume that exposure levels not expected to harm humans are also not expected to harm ecological receptors.

Although the ecological effects of lead are well documented, there was a lack of evidence at the time of the last lead NAAQS review linking various ecological effects to specific levels of lead in the air. It was determined that the evidence did not provide a sufficient basis for establishing a separate secondary standard, but that revising the secondary standard to be equal to the revised primary standard would provide substantial additional protection to ecological receptors from the effects of lead. Thus, we find it appropriate to consider the secondary lead NAAQS when evaluating the potential for adverse environmental effects.

Comment: One commenter generally stated that the EPA must not use the secondary NAAQS as a benchmark to determine whether there will be environmental effects and that the use of the lead NAAQS to evaluate ecologic risks is inappropriate. The commenter states that the EPA should recognize that the establishment of the Secondary lead NAAQS at the same level of the Primary Lead NAAQS was a risk management decision, rather than a decision quantitatively founded in risk assessment. The commenter cited that in establishing the lead NAAQS, the EPA introduced its approach by describing the ''substantial limitations in the evidence, especially the lack of evidence linking various effects to specific levels of ambient Pb'' (U.S. EPA, 2008. P. 67007), and ultimately concluded that the secondary lead NAAQS should be set equal to the primary lead NAAQS.

In contrast, in this proposed rule, the EPA concludes that ''ambient lead concentrations above the lead NAAQS indicates potential for adverse environmental effects'' (76 FR 9421).

Response: The secondary lead NAAQS was set to protect against adverse welfare effects (including adverse environmental effects) and has the same averaging time, form, and level as the primary standard. Thus, we find it appropriate to consider the secondary lead NAAQS when considering the potential for adverse environmental effects. The commenter is correct that we stated in the proposed rule that ''ambient lead concentrations above the lead NAAQS indicates potential for adverse environmental effects.'' This statement is entirely consistent with the idea that the secondary lead NAAQS was set at a level above which there may be adverse environmental effects but does not support a conclusion that there are adverse environmental effects below that level that must be addressed as part of this residual risk determination. As we have noted previously, there are not sufficient data supporting that a lower level is necessary to protect against an environmental risk.

Comment: One commenter stated that in evaluating potential multipathway risks from PB–HAP other than lead, the EPA used *de minimis* emission rates to screen for potentially significant multi-pathway impacts, but for lead, this method was abandoned. The commenter disagrees with this approach, stating, ''This comparison mirrors NAAQS source monitoring for attainment purposes in its use of the national ambient air lead level as the benchmark. As such, it is not a proper surrogate for ''facility-level *de minimis* emission rates'' used as the chronic reference benchmarks for CAA section 112 risk assessments.''

Response: The EPA disagrees that comparing modeled 3-month rolling average lead concentrations to the NAAQS for lead mirrors source monitoring for NAAQS attainment purposes and that this approach is not a proper surrogate for facility-level *de minimis* emission rates used as the chronic reference benchmarks for CAA section 112 risk assessments. In general, determining attainment for the lead NAAQS is based on aggregate ambient monitoring of all potential sources of lead in a given area. In contrast, the Primary Lead Smelting Risk Assessment and Preamble clearly state that 3-month rolling average lead concentrations are based on modeled lead concentrations from lead emissions from the one facility in the source category. 76 FR 9421. Thus, for example, while for NAAQS attainment purposes ambient lead concentrations resulting from lead haul roads outside the facility boundary would contribute to the overall 3-month rolling average ambient lead concentration measured at a nearby ambient lead monitor, for purposes of the risk assessment to support this rulemaking, these types of offsite emission sources were not included when modeling 3-month rolling lead concentrations (*i.e.,* only emission sources from within the facility boundary were used as inputs into the dispersion model to estimate resulting modeled 3-month average lead concentrations).

The NAAQS for lead was set to protect, with an adequate margin of safety, human health, including the health of children and other at-risk populations, against an array of adverse health effects, most notably including neurological effects, particularly neurobehavioral and neurocognitive effects, in children (73 FR 67007). In developing the NAAQS for lead, because of the multi-pathway, multi-media impacts of lead, the risk assessment supporting the NAAQS considered direct inhalation exposures and indirect air-related multi-pathway exposures from industrial sources like primary and secondary lead smelting operations. It also considered background lead exposures from other sources (like contaminated drinking water and exposure to lead-based paints). The EPA believes that the lead NAAQS is a reasonable benchmark to evaluate the potential for multipathway health effects from lead.

Finally, as noted in the risk assessment document, there is no RfD or other comparable chronic health benchmark value for lead compounds. That is, in 1988, the EPA's IRIS program reviewed the health effects data regarding lead and its inorganic compounds and determined that it would be inappropriate to develop an RfD for these compounds, saying, ''A great deal of information on the health effects of lead has been obtained through decades of medical observation and scientific research. This information has been assessed in the development of air and water quality criteria by the Agency's Office of Health and Environmental Assessment (OHEA) in support of regulatory decision-making by the Office of Air Quality Planning and Standards (OAQPS) and by the Office of Drinking Water (ODW). By comparison to most other environmental toxicants, the degree of uncertainty about the health effects of lead is quite low. It appears that some of these effects, particularly changes in the levels of certain blood enzymes and in aspects of children's neurobehavioral development, may occur at blood lead levels so low as to be essentially without a threshold. The agency's RfD Work Group discussed inorganic lead (and lead compounds) at two meetings (07/08/1985 and 07/22/1985) and considered it inappropriate to develop an RfD for inorganic lead.'' The EPA's IRIS assessment for Lead and compounds (inorganic) (CASRN 7439–92–1), *http://www.epa.gov/iris/subst/0277.htm.*

Comment: One commenter stated that the EPA must include a plain language statement of health risks and benefits of the proposed rule. As part of its rulemaking proposal, the EPA should include a plain statement of the health impacts and risks at issue. For example, the commenter stated that the MIR and chronic and risk numbers are not easily

understandable by the general public; the IQ point losses at stake or how it is setting a standard to address these are not discussed, and the types of cancer or the nature of the health disorders or other adverse effects that most of these types of HAP emissions present to the public are not discussed. The commenter stated that this type of ''[e]xpanded discussion is important to understanding the 'real-world' risk, including dealing with health disparities.'' SAB May 2010 at 50.

A full elaboration of the types of health impacts at issue here, ranging from significant IQ loss (due to lead emissions), to a high lifetime cancer risk (from non-lead emissions), for this particular community, is needed to inform the EPA's and the public's consideration of what level of risk is acceptable or unacceptable, and what standard is required to provide an ample margin of safety.

Response: The EPA strives to communicate its health and risk information to the public in a manner that is concise, informative, and readily understandable. In the risk assessment document, we discuss the various metrics used to characterize risk associated with the source category (*e.g.,* see section 2.3 of the risk assessment document for a discussion of the MIR). Moreover, while the commenter is correct that we do not discuss in detail the neurological effects associated with exposure to lead (*e.g.,* loss of IQ points in children), we do reference the final lead NAAQS decision, which does discuss in detail the health effects associated with lead exposure. With regard to how the proposed controls limit the health risks associated with lead exposure, we noted in the preamble of the proposed rule that the proposed controls would ensure that the facility's contribution to ambient concentrations of lead were at or below the NAAQS for lead and that this represents an acceptable level of risk since the lead NAAQS was set to protect public health, including the health of sensitive populations (*e.g.,* children), from the adverse health effects associated with lead exposure. Moreover, although the requirements that we are promulgating in today's action are somewhat different than the proposed requirements, we believe that the requirements that we are promulgating will also ensure that the facility's contribution to ambient concentrations of lead will not present an unacceptable level of risk. In addition, as discussed previously, we have not identified any additional cost-effective controls and we therefore conclude that the same level of controls to achieve acceptable risks will also provide an ample margin of safety.

With regard to discussing specific types of cancers potentially associated with exposure to a given HAP, we note that the cancer unit risk estimates used in the risk assessment are not associated with specific types of cancers, but rather with the risk of cancer in general. Moreover, since many of the cancer studies the unit risk estimates take into account are animal studies, there is appreciable uncertainty as to whether the same types of cancers would be seen in humans. Thus, we find it appropriate to express the results of our cancer assessment in terms of general cancer risk.

VI. Impacts of the Final Rule

The revisions to the Primary Lead Processing MACT standard will ensure that emissions from the one source in this source category do not present an unacceptable level of risk and will also provide an ample margin of safety. The estimated reductions include as much as 10 tons per year of lead from the furnace area and refining operations stacks. We also expect reductions will be achieved with the additional work practices, but we have not been able to quantify those reductions. These controls and work practices will also reduce emissions of other HAP emitted from the facility. The costs of these controls and work practices were not directly considered in the decision because these controls and practices are necessary to ensure that risks are acceptable. The EPA evaluated control practices and technology and associated costs in determining that the same requirements needed to achieve acceptable risks would also provide an ample margin of safety. In addition, we considered other available practices, processes and control technologies. For the same reason we concluded that no additional controls were necessary to provide an ample margin of safety, we concluded that there were no additional cost effective developments in practices, processes or control technologies for any sources other than the main stack.

VII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0414.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

This final rule includes new paperwork requirements for increased frequency for stack testing as described in 40 CFR 63.1546.

When a malfunction occurs, sources must report the event according to the applicable reporting requirements of 40 CFR part 63, subpart TTT. An affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions is available to a source if it can demonstrate that certain criteria and requirements are satisfied. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonably preventable, and not caused by poor maintenance and or careless operation) and where the source took necessary actions to minimize emissions. In addition, the source must meet certain notification and reporting requirements. For example, the source must prepare a written root cause analysis and submit a written report to the Administrator documenting that it has met the conditions and requirements for assertion of the affirmative defense.

The EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden

associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to the ICR that show what the notification, recordkeeping, and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports, and records, including the root cause analysis, totals $3,141, and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emission limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden, because these costs are only incurred if there has been a violation, and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emission events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 2 or 3 such occurrences for all sources subject to 40 CFR part 63, subpart TTT over the 3-year period covered by this ICR. We expect to gather information on such events in the future, and will revise this estimate as better information becomes available.

For the Primary Lead Processing MACT standard, the ICR document prepared by the EPA, which has been revised to include the amendments to the standards, has been assigned the EPA ICR number 1856.08. Burden changes associated with these amendments result from the reporting and recordkeeping requirements of the affirmative defense provisions added to the rule. The change in respondents' annual reporting and recordkeeping burden associated with these amendments for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be 30 labor hours at a cost of $3,141 per year for the affirmative defense reporting. There will be no capital costs associated with the information collection requirements of the final rule. There is no estimated change in annual burden to the Federal government for these amendments. Burden is defined at 5 CFR 1320.3(b).

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 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the *Administrative Procedure Act,* or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of these final rules on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these final rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action will not impose any requirements on small entities. The costs associated with the new requirements in these final rules are not expected to present an undue burden to this industry as discussed above.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. 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 or 205 of the UMRA.

These rules are also not subject to the regulatory requirements that might significantly or uniquely affect small governments. They contain no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final rules primarily affect private industry, and do not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This 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. However, the agency does believe there is a disproportionate risk to children. Modeled ambient air lead

concentrations from the one facility in this source category are in excess of the NAAQS for lead, which was set to ''provide increased protection for children and other at-risk populations against an array of adverse health effects, most notably including neurological effects in children, including neurocognitive and neurobehavioral effects.'' 73 FR 67007. However, the control measures promulgated in this notice will result in lead concentration levels that are in compliance with the lead NAAQS, thereby mitigating the risk of adverse health effects to children.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse energy effect on the supply, distribution, or use of energy. This action will not create any new requirements for sources in the energy supply, distribution, or use sectors. Further, we have concluded that these final rules are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs the 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, the 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, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

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 it does not decrease the level of protection provided to human health or the environment, but in fact decreases emissions of lead. To examine the potential for any environmental justice issues that might be associated with this rule, we evaluated the distributions of HAP-related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the one facility that is currently operating in this source category. Our analyses also show that, although there is potential for an adverse environmental and human health effects from emission of lead, it does not indicate any significant potential for disparate impacts to the specific demographic groups analyzed.

The rule would require additional control measures to address the identified environmental and health risks and would therefore, decrease risks to any populations exposed to these sources.

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 United States. The EPA will submit a report containing this final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final 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). The final rules will be effective on November 15, 2011.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 4, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart TTT—[Amended]

■ 2. Section 63.1541 is revised to read as follows:

§ 63.1541 Applicability.

(a) The provisions of this subpart apply to any facility engaged in producing lead metal from ore concentrates. The category includes, but is not limited to, the following smelting processes: Sintering, reduction, preliminary treatment, refining and casting operations, process fugitive sources, and fugitive dust sources. The sinter process includes an updraft or downdraft sintering machine. The reduction process includes the blast furnace, electric smelting furnace with a converter or reverberatory furnace, and slag fuming furnace process units. The preliminary treatment process includes the drossing kettles and dross reverberatory furnace process units. The refining process includes the refinery process unit. The provisions of this subpart do not apply to secondary lead smelters, lead refiners, or lead remelters.

(b) Table 1 of this subpart specifies the provisions of subpart A of this part that apply and those that do not apply to owners and operators of primary lead processors.

■ 3. Section 63.1542 is amended by adding a definition for ''Affirmative defense,'' ''Lead refiner,'' ''Lead remelter,'' ''Primary lead processor,'' and ''Secondary lead smelter;'' removing the definition of ''Primary lead smelter;'' and revising the definitions of ''Fugitive dust source,'' ''Furnace area,'' ''Malfunction,'' ''Materials storage and handling area,'' ''Plant roadway,'' ''Process fugitive source,'' ''Refining and casting area,'' ''Sinter machine area,'' and ''Tapping location'' to read as follows:

§ 63.1542 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and

the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a primary lead processor resulting from the handling, storage, transfer, or other management of lead-bearing materials where the source is not part of a specific process, process vent, or stack. Fugitive dust sources include roadways, storage piles, materials handling transfer points, and materials transport areas.

Furnace area means any area of a primary lead processor in which a blast furnace or dross furnace is located.

Lead refiner means any facility that refines lead metal that is not located at a primary lead processor.

Lead remelter means any facility that remelts lead metal that is not located at a primary lead processor.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Materials storage and handling area means any area of a primary lead processor in which lead-bearing materials (including ore concentrate, sinter, granulated lead, dross, slag, and flue dust) are stored or handled between process steps, including areas in which materials are stored in piles, bins, or tubs, and areas in which material is prepared for charging to a sinter machine or smelting furnace or other lead processing operation.

* * * * *

Plant roadway means any area of a primary lead processor that is subject to vehicle traffic, including traffic by forklifts, front-end loaders, or vehicles carrying ore concentrates or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Primary lead processor means any facility engaged in the production of lead metal from lead sulfide ore concentrates through the use of pyrometallurgical or other techniques.

Process fugitive source means a source of hazardous air pollutant emissions at a primary lead processor that is associated with lead smelting, processing or refining but is not the primary exhaust stream and is not a fugitive dust source. Process fugitive sources include sinter machine charging locations, sinter machine discharge locations, sinter crushing and sizing equipment, furnace charging locations, furnace taps, and drossing kettle and refining kettle charging or tapping locations.

Refining and casting area means any area of a primary lead processor in which drossing or refining operations occur, or casting operations occur.

Secondary lead smelter means any facility at which lead-bearing scrap material, primarily, but not limited to, lead-acid batteries, is recycled into elemental lead or lead alloys by smelting.

* * * * *

Sinter machine area means any area of a primary lead processor where a sinter machine, or sinter crushing and sizing equipment is located.

* * * * *

Tapping location means the opening through which lead and slag are removed from the furnace.

■ 4. Section 63.1543 is revised to read as follows:

§ 63.1543 Standards for process and process fugitive sources.

(a) No owner or operator of any existing, new, or reconstructed primary lead processor shall discharge or cause to be discharged into the atmosphere lead compounds in excess of 0.97 pounds per ton of lead metal produced from the aggregation of emissions discharged from air pollution control devices used to control emissions from the sources listed in paragraphs (a)(1) through (9) of this section.

(1) Sinter machine;

(2) Blast furnace;

(3) Dross furnace;

(4) Dross furnace charging location;

(5) Blast furnace and dross furnace tapping location;

(6) Sinter machine charging location;

(7) Sinter machine discharge end;

(8) Sinter crushing and sizing equipment; and

(9) Sinter machine area.

(b) No owner or operator of any existing, new, or reconstructed primary lead processor shall discharge or cause to be discharged into the atmosphere lead compounds in excess of 1.2 tons per year from the aggregation of the air pollution control devices used to control emissions from furnace area and refining and casting operations.

(c) The process fugitive sources listed in paragraphs (a)(4) through (8) of this section must be equipped with a hood and must be ventilated to a baghouse or equivalent control device. The hood design and ventilation rate must be consistent with American Conference of Governmental Industrial Hygienists recommended practices.

(d) The sinter machine area must be enclosed in a building that is ventilated to a baghouse or equivalent control device at a rate that maintains a positive in-draft through any doorway opening.

(e) Except as provided in paragraph (f) of this section, following the initial tests to demonstrate compliance with paragraphs (a) and (b) of this section, the owner or operator of a primary lead processor must conduct compliance tests for lead compounds on a quarterly basis (no later than 100 days following any previous compliance test).

(f) If the 12 most recent compliance tests demonstrate compliance with the emission limit specified in paragraphs (a) and (b) of this section, the owner or operator of a primary lead processor shall be allowed up to 12 calendar months from the last compliance test to conduct the next compliance test for lead compounds.

(g) The owner or operator of a primary lead processor must maintain and operate each baghouse used to control emissions from the sources listed in paragraphs (a)(1) through (9) and (b) of this section such that the alarm on a bag leak detection system required under § 63.1547(c)(8) does not sound for more than five percent of the total operating time in a 6-month reporting period.

(h) The owner or operator of a primary lead processor must record the date and time of a bag leak detection system alarm and initiate procedures to determine the cause of the alarm according to the corrective action plan required under § 63.1547(f) within 1 hour of the alarm. The cause of the alarm must be corrected as soon as practicable.

(i) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 5. Section 63.1544 is revised to read as follows:

§ 63.1544 Standards for fugitive dust sources.

(a) Each owner or operator of a primary lead processor must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail the measures that will be put in place to control fugitive dust emissions from the sources listed in paragraphs (a)(1) through (a)(5) of this section that incorporates each of the specific work practices listed in paragraphs (a)(1) through (a)(5) of this section:

(1) *Plant roadways.* (i) Paved plant roadways must be cleaned using a wet sweeper unless the temperature falls below 39 degrees Fahrenheit or when the application of water results in the formation of ice. During periods when the temperature is below 39 degrees Fahrenheit, paved plant roadways must be cleaned using a high efficiency dry sweeper.

(ii) Continuously operate a sprinkler system to wet plant roadways to prevent fugitive dust entrainment. This sprinkler system must be operated except during periods when the temperature is less than 39 degrees Fahrenheit or when the application of water results in formation of ice.

(2) *Material storage and handling area(s).* (i) Chemically stabilize inactive concentrate storage piles a minimum of once every month to reduce particulate from wind born re-suspension.

(ii) Finished sinter must be sufficiently wetted to ensure fugitive dust emissions are minimized prior to loading to railcars.

(3) *Sinter machine area(s).* (i) Personnel doors must be kept closed during operations except when entering or exiting the furnace building by the aid of door weights or similar device for automatic closure.

(ii) Large equipment doors must remain closed except when entering or existing the building using an automatic closure system or equivalent lock-and-key method.

(iii) It may be necessary to open doors subject to the requirements in § 63.1544(a)(3)(i) and (ii) to prevent heat stress or exhaustion of workers inside the sinter plant building. Records of such periods must be included in the report required under § 63.1549(e)(8).

(4) *Furnace area(s).* (i) Personnel doors must be kept closed during operations except when entering or exiting the furnace building by the aid of door weights or similar device for automatic closure.

(ii) Large equipment doors must remain closed except when entering or existing the building using an automatic closure system or equivalent lock-and-key method.

(iii) It may be necessary to open doors subject to the requirements in § 63.1544(a)(4)(i) and (ii) to prevent heat stress or exhaustion of workers inside the blast furnace building. Records of such periods must be included in the report required under § 63.1549(e)(8).

(5) *Refining and casting area(s).* (i) Personnel doors must be kept closed during operations except when entering or exiting the furnace building by the aid of door weights or similar device for automatic closure.

(ii) Large equipment doors must remain closed except when entering or existing the building using an automatic closure system or equivalent lock-and-key method.

(iii) It may be necessary to open doors subject to the requirements in § 63.1544(a)(5)(i) and (ii) to prevent heat stress or exhaustion of workers inside the refining and casting building. Records of such periods must be included in the report required under § 63.1549(e)(8).

(b) Notwithstanding paragraph (c) of this section, the standard operating procedures manual shall be submitted to the Administrator or delegated authority for review and approval.

(c) Existing manuals that describe the measures in place to control fugitive dust sources required as part of a State implementation plan for lead shall satisfy the requirements of paragraph (a) of this section provided they include all the work practices as described in paragraphs (a)(1) through (5) of this section and provided they address all the sources listed in paragraphs (a)(1) through (5) of this section.

(d) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 6. Section 63.1545 is revised to read as follows:

§ 63.1545 Compliance dates.

(a) Each owner or operator of an existing primary lead processor must achieve compliance with the requirements in § 16.1543(a) no later than January 17, 2012. Each owner or operator of an existing primary lead processor must achieve compliance with the requirements of § 63.1544 no later than February 13, 2012. Each owner or operator of an existing primary lead processor must achieve compliance with the requirements in § 63.1543(b) and (e) of this subpart no later than November 15, 2013.

(b) Each owner or operator of a new primary lead processor must achieve compliance with the requirements of this subpart no later than January 17, 2012 or startup, whichever is later.

(c) Prior to the dates specified in § 63.1545(a), each owner or operator of an existing primary lead processor must continue to comply with the requirements of §§ 63.1543 and 63.1544 as promulgated in the June 4, 1999 NESHAP for Primary Lead Smelting.

(d) Each owner or operator of an existing primary lead processor must comply with the requirements of §§ 63.1547(g)(1) and (2), 63.1551, and Table 1 of Subpart TTT of Part 63 on November 15, 2011.

■ 7. Section 63.1546 is revised to read as follows:

§ 63.1546 Performance testing.

(a) The following procedures must be used to determine quarterly compliance with the emissions standard for lead compounds under § 63.1543(a) and (b) for existing sources:

(1) Each owner or operator of existing sources listed in § 63.1543(a)(1) through (9) and (b) must determine the lead compound emissions rate, in units of pounds of lead per hour according to the following test methods in appendix A of part 60 of this chapter:

(i) Method 1 must be used to select the sampling port location and the number of traverse points.

(ii) Method 2, 2F, 2G must be used to measure volumetric flow rate.

(iii) Method 3, 3A, 3B must be used for gas analysis.

(iv) Method 4 must be used to determine moisture content of the stack gas.

(v) Method 12 or Method 29 must be used to determine lead emissions rate of the stack gas.

(2) A performance test shall consist of at least three runs. For each test run with Method 12 or Method 29, the minimum sample time must be 60 minutes and the minimum volume must be 1 dry standard cubic meter (35 dry standard cubic feet).

(3) Performance tests shall be completed quarterly, once every 3 months, to determine compliance.

(4) The lead emission rate in pounds per quarter is calculated by multiplying

the quarterly lead emission rate in pounds per hour by the quarterly plant operating time, in hours as shown in Equation 1:

$$E_{Pb} = ER_{Pb} \times QPOT \quad \text{(Eq. 1)}$$

Where:

E_{Pb} = quarterly lead emissions, pounds per quarter;

ER_{Pb} = quarterly lead emissions rate, pounds per hour; and

QPOT = quarterly plant operating time, hours per quarter.

(5) The lead production rate, in units of tons per quarter, must be determined based on production data for the previous quarter according to the procedures detailed in paragraphs (a)(5)(i) through (iv) of this section:

(i) Total lead products production multiplied by the fractional lead content must be determined in units of tons.

(ii) Total copper matte production multiplied by the fractional lead content must be determined in units of tons.

(iii) Total copper speiss production multiplied by the fractional lead content must be determined in units of tons.

(iv) Total quarterly lead production must be determined by summing the values obtained in paragraphs (a)(5)(i) through (iii) of this section.

(6) To determine compliance with the production-based lead compound emission rate in § 63.1543(a), the quarterly production-based lead compound emission rate, in units of pounds of lead emissions per ton of lead produced, is calculated as shown in Equation 2 by dividing lead emissions by lead production.

$$CE_{Pb} = \frac{E_{Pb}}{P_{Pb}} \quad \text{(Eq. 2)}$$

Where:

CE_{Pb} = quarterly production-based lead compound emission rate, in units of pounds of lead emissions per ton of lead produced;

E_{Pb} = quarterly lead emissions, pounds per quarter; and

P_{Pb} = quarterly lead production, tons per quarter.

(7) To determine quarterly compliance with the emissions standard for lead compounds under § 63.1543(b), sum the lead compound emission rates for the current and previous three quarters for the sources in § 63.1543(b), as determined in accordance with paragraphs (a)(1) through (4) of this section.

(b) Owners and operators must perform an initial compliance test to demonstrate compliance with the sinter building in-draft requirements of § 63.1543(d) at each doorway opening in accordance with paragraphs (b)(1) through (4) of this section.

(1) Use a propeller anemometer or equivalent device.

(2) Determine doorway in-draft by placing the anemometer in the plane of the doorway opening near its center.

(3) Determine doorway in-draft for each doorway that is open during normal operation with all remaining doorways in their customary position during normal operation.

(4) Do not determine doorway in-draft when ambient wind speed exceeds 2 meters per second.

(c) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

■ 8. Section 63.1547 is revised to read as follows:

§ 63.1547 Monitoring requirements.

(a) Owners and operators of primary lead processors must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail the procedures for inspection, maintenance, and bag leak detection and corrective action for all baghouses that are used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in §§ 63.1543 and 63.1544, including those used to control emissions from general ventilation systems.

(b) The standard operating procedures manual for baghouses required by paragraph (a) of this section must be submitted to the Administrator or delegated authority for review and approval.

(c) The procedures specified in the standard operating procedures manual for inspections and routine maintenance must, at a minimum, include the requirements of paragraphs (c)(1) through (8) of this section.

(1) Weekly confirmation that dust is being removed from hoppers through visual inspection or equivalent means of ensuring the proper functioning of removal mechanisms.

(2) Daily check of compressed air supply for pulse-jet baghouses.

(3) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(4) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(5) Quarterly visual check of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(6) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(7) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(8) Except as provided in paragraph (h) of this section, continuous operation of a bag leak detection system.

(d) The procedures specified in the standard operating procedures manual for maintenance must, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (c)(8) of this section must meet the specifications and requirements of (e)(1) through (8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligram per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings, and the owner or operator must continuously record the output from the bag leak detection system.

(3) The bag leak detection system must be equipped with an alarm system that will sound when an increase in relative particulate loading is detected over a preset level, and the alarm must be located such that it can be heard or otherwise determined by the appropriate plant personnel.

(4) Each bag leak detection system that works based on the triboelectric effect must be installed, calibrated, and maintained in a manner consistent with guidance provided in the U.S. Environmental Protection Agency guidance document ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015). Other bag leak detection systems must be installed, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(5) The initial adjustment of the system must, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the

averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved SOP required under paragraph (a) of this section. In no event shall the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless a responsible official certifies that the baghouse has been inspected and found to be in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) The standard operating procedures manual required by paragraph (a) of this section must include a corrective action plan that specifies the procedures to be followed in the event of a bag leak detection system alarm. The corrective action plan must include at a minimum, procedures to be used to determine the cause of an alarm, as well as actions to be taken to minimize emissions, which may include, but are not limited to, the following.

(1) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(2) Sealing off defective bags or filter media.

(3) Replacing defective bags or filter media, or otherwise repairing the control device.

(4) Sealing off a defective baghouse compartment.

(5) Cleaning the bag leak detection system probe, or otherwise repairing or maintaining the bag leak detection system.

(6) Shutting down the process producing the particulate emissions.

(g) The percentage of total operating time the alarm on the bag leak detection system sounds in a 6-month reporting period must be calculated in order to determine compliance with the five percent operating limit in § 63.1543(g). The percentage of time the alarm on the bag leak detection system sounds must be determined according to paragraphs (g)(1) through (3) of this section.

(1) For each alarm where the owner or operator initiates procedures to determine the cause of an alarm within 1 hour of the alarm, 1 hour of alarm time must be counted.

(2) For each alarm where the owner or operator does not initiate procedures to determine the cause of the alarm within 1 hour of the alarm, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate procedures to determine the cause of the alarm.

(3) The percentage of time the alarm on the bag leak detection system sounds must be calculated as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(h) Baghouses equipped with HEPA filters as a secondary filter used to control process or process fugitive sources subject to the lead emission standards in § 63.1543 are exempt from the requirement in paragraph (c)(8) of this section to be equipped with a bag leak detector. The owner or operator of an affected source that uses a HEPA filter must monitor and record the pressure drop across the HEPA filter system daily. If the pressure drop is outside the limit(s) specified by the filter manufacturer, the owner or operator must take appropriate corrective measures, which may include, but not be limited to, the following:

(1) Inspecting the filter and filter housing for air leaks and torn or broken filters.

(2) Replacing defective filter media, or otherwise repairing the control device.

(3) Sealing off a defective control device by routing air to other comparable control devices.

(4) Shutting down the process producing the particulate emissions.

(i) Owners and operators must monitor sinter machine building in-draft to demonstrate continued compliance with the operating standard specified in § 63.1543(d) in accordance with either paragraph (i)(1), (2), or (3) of this section.

(1) Owners and operators must check and record on a daily basis doorway in-draft at each doorway in accordance with the methodology specified in § 63.1546(b).

(2) Owners and operators must establish and maintain baseline ventilation parameters which result in a positive in-draft according to paragraphs (i)(2)(i) through (iv) of this section.

(i) Owners and operators must install, calibrate, maintain, and operate a monitoring device that continuously records the volumetric flow rate through each separately ducted hood; or install, calibrate, maintain, and operate a monitoring device that continuously records the volumetric flow rate at the control device inlet of each exhaust system ventilating the building. The flow rate monitoring device(s) can be installed in any location in the exhaust duct such that reproducible flow rate measurements will result. The flow rate monitoring device(s) must have an accuracy of plus or minus 10 percent over the normal process operating range and must be calibrated according to manufacturer's instructions.

(ii) During the initial demonstration of sinter building in-draft, and at any time the owner or operator wishes to re-establish the baseline ventilation parameters, the owner or operator must continuously record the volumetric flow rate through each separately ducted hood, or continuously record the volumetric flow rate at the control device inlet of each exhaust system ventilating the building and record exhaust system damper positions. The owner or operator must determine the average volumetric flow rate(s) corresponding to the period of time the in-draft compliance determinations are being conducted.

(iii) The owner or operator must maintain the volumetric flow rate(s) at or above the value(s) established during the most recent in-draft determination at all times the sinter machine is in operation. Volumetric flow rate(s) must be calculated as a 15-minute average.

(iv) If the volumetric flow rate is monitored at the control device inlet, the owner or operator must check and record damper positions daily to ensure they are in the positions they were in during the most recent in-draft determination.

(3) An owner or operator may request an alternative monitoring method by following the procedures and requirements in § 63.8(f) of the General Provisions.

(j) Each owner or operator of new or modified sources listed under § 63.1543 (a)(1) through (9) and (b) must install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) for measuring lead emissions and a continuous emission rate monitoring system (CERMS) subject to Performance Specification 6 of Appendix B to part 60.

(1) Each owner or operator of a source subject to the emissions limits for lead compounds under § 63.1543(a)and (b) must install a CEMS for measuring lead emissions within 180 days of promulgation of performance specifications for lead CEMS.

(i) Prior to promulgation of performance specifications for CEMS used to measure lead concentrations, an owner or operator must use the procedure described in § 63.1546(a)(1)

through (7) of this section to determine compliance.

(2) If a CEMS used to measure lead emissions is applicable, the owner or operator must install a CERMS with a sensor in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the CEMS used to measure lead emissions, taking into account the manufacturer's recommendations. The flow rate sensor is that portion of the system that senses the volumetric flow rate and generates an output proportional to that flow rate.

(i) The CERMS must be designed to measure the exhaust gas flow rate over a range that extends from a value of at least 20 percent less than the lowest expected exhaust flow rate to a value of at least 20 percent greater than the highest expected exhaust gas flow rate.

(ii) The CERMS must be equipped with a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (j)(2)(i) of this section.

(iii) Each owner or operator must perform an initial relative accuracy test of the CERMS in accordance with the applicable Performance Specification in Appendix B to part 60 of the chapter.

(iv) Each owner or operator must operate the CERMS and record data during all periods of operation of the affected facility including periods of startup, shutdown, and malfunction, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments.

(3) Each owner or operator must calculate the lead emissions rate in tons per year by summing all hours of CEMS data for a year to determine compliance with § 63.1543(b).

(i) When the CERMS are unable to provide quality assured data the following applies:

(A) When data are not available for periods of up to 48 hours, the highest recorded hourly emission rate from the previous 24 hours must be used.

(B) When data are not available for 48 or more hours, the maximum daily emission rate based on the previous 30 days must be used.

■ 9. Section 63.1548 is revised to read as follows:

§ 63.1548 Notification requirements.

(a) The owner or operator of a primary lead processor must comply with the notification requirements of § 63.9 of subpart A, General Provisions as specified in Table 1 of this subpart.

(b) The owner or operator of a primary lead processor must submit the standard operating procedures manual for baghouses required under § 63.1547(a) to the Administrator or delegated authority along with a notification that the primary lead processor is seeking review and approval of the manual and procedures. Owners or operators of existing primary lead processors must submit this notification no later than November 6, 2000. The owner or operator of a primary lead processor that commences construction or reconstruction after April 17, 1998, must submit this notification no later than 180 days before startup of the constructed or reconstructed primary lead processor, but no sooner than September 2, 1999.

■ 10. Section 63.1549 is revised to read as follows:

§ 63.1549 Recordkeeping and reporting requirements.

(a) The owner or operator of a primary lead processor must comply with the recordkeeping requirements of § 63.10 of subpart A, General Provisions as specified in Table 1 of this subpart.

(b) In addition to the general records required by paragraph (a) of this section, each owner or operator of a primary lead processor must maintain for a period of 5 years, records of the information listed in paragraphs (b)(1) through (10) of this section.

(1) Production records of the weight and lead content of lead products, copper matte, and copper speiss.

(2) Records of the bag leak detection system output.

(3) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, and the date and time the cause of the alarm was corrected.

(4) Any recordkeeping required as part of the practices described in the standard operating procedures manual for baghouses required under § 63.1547(a).

(5) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(1), the records of the daily doorway in-draft checks, an identification of the periods when there was not a positive in-draft, and an explanation of the corrective actions taken.

(6) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(2), the records of the output from the continuous volumetric flow monitor(s), an identification of the periods when the 15-minute volumetric flow rate dropped below the minimum established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(7) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(2), and volumetric flow rate is monitored at the baghouse inlet, records of the daily checks of damper positions, an identification of the days that the damper positions were not in the positions established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(8) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

(9) Records of actions taken during periods of malfunction to minimize emissions in accordance with §§ 63.1543(i) and 63.1544(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(c) Records for the most recent 2 years of operation must be maintained on site. Records for the previous 3 years may be maintained off site.

(d) The owner or operator of a primary lead processor must comply with the reporting requirements of § 63.10 of subpart A, General Provisions as specified in Table 1 of this subpart.

(e) In addition to the information required under § 63.10 of the General Provisions, the owner or operator must provide semi-annual reports containing the information specified in paragraphs (e)(1) through (9) of this section to the Administrator or designated authority.

(1) The reports must include records of all alarms from the bag leak detection system specified in § 63.1547(e).

(2) The reports must include a description of the actions taken following each bag leak detection system alarm pursuant to § 63.1547(f).

(3) The reports must include a calculation of the percentage of time the alarm on the bag leak detection system sounded during the reporting period pursuant to § 63.1547(g).

(4) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(1), the reports must contain an identification of the periods when there was not a positive in-draft, and an explanation of the corrective actions taken.

(5) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(2), the reports must contain an identification of the periods when the 15-minute volumetric flow rate(s) dropped below the minimum established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(6) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(2), and volumetric flow rate is monitored at the baghouse inlet, the reports must contain an identification of the days that the damper positions were not in the positions established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(7) The reports must contain a summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.1547(a), including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(8) The reports shall contain a summary of the fugitive dust control measures performed during the required reporting period, including an explanation of any periods when the procedures outlined in the standard operating procedures manual required by § 63.1544(a) were not followed and the corrective actions taken. The reports shall not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under §§ 63.1544(a) and 63.1547(a).

(9) If there was a malfunction during the reporting period, the report shall also include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with §§ 63.1543(i) and 63.1544(d), including actions taken to correct a malfunction.

■ 11. Section 63.1550 is revised to read as follows:

§ 63.1550 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the act, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

■ 12. Section 63.1551 is added to read as follows:

§ 63.1551 Affirmative defense for exceedance of emission limit during malfunction.

In response to an action to enforce the standards set forth in this subpart you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) *Affirmative defense.* To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standards in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

■ 13. Table 1 to Subpart TTT of Part 63 is revised to read as follows:

TABLE 1 OF SUBPART TTT—GENERAL PROVISIONS APPLICABILITY TO SUBPART TTT

Reference	Applies to subpart TTT	Comment
* * *	*	* * *
63.6(a), (b), (c)	Yes.	
63.6(d)	No	Section reserved.
63.6(e)(1)(i)	No	See 63.1543(i) and 63.1544(d) for general duty requirement.
63.6(e)(1)(ii)	No.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	No	Section reserved.
63.6(e)(3)	No.	
63.6(f)(1)	No.	
63.6(g)	Yes.	
63.6(h)	No	No opacity limits in rule.
63.6(i)	Yes.	
63.6(j)	Yes.	
§63.7(a)–(d)	Yes.	
§63.7(e)(1)	No	See 63.1546(c).
§63.7(e)(2)–(e)(4)	Yes.	
63.7(f), (g), (h)	Yes.	
63.8(a)–(b)	Yes.	
63.8(c)(1)(i)	No.	
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	No.	
63.8(c)(2)–(d)(2)	Yes.	
63.8(d)(3)	Yes, except for last sentence.	
63.8(e)–(g)	Yes.	
63.9(a), (b), (c), (e), (g), (h)(1) through (3), (h)(5) and (6), (i) and (j).	Yes.	
63.9(f)	No.	
63.9(h)(4)	No	Reserved.
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No	See 63.1549(b)(9) and (10) for recordkeeping of occurrence and duration of malfunctions and recordkeeping of actions taken during malfunction.
63.10(b)(2)(iii)	Yes.	
63.10(b)(2)(iv)–(b)(2)(v)	No.	
63.10(b)(2)(vi)–(b)(2)(xiv)	Yes.	
63.(10)(b)(3)	Yes.	
63.10(c)(1)–(9)	Yes.	
63.10(c)(10)–(11)	No	See 63.1549(b)(9) and (10) for recordkeeping of malfunctions.
63.10(c)(12)–(c)(14)	Yes.	
63.10(c)(15)	No.	
63.10(d)(1)–(4)	Yes.	
63.10(d)(5)	No	See 63.1549(e)(9) for reporting of malfunctions.
63.10(e)–(f)	Yes.	
* * *	*	* * *

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Part III

The President

Executive Order 13589—Promoting Efficient Spending

Federal Register
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Tuesday, November 15, 2011

Presidential Documents

Title 3—

The President

Executive Order 13589 of November 9, 2011

Promoting Efficient Spending

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further promote efficient spending in the Federal Government, it is hereby ordered as follows:

Section 1. *Policy.* My Administration is committed to cutting waste in Federal Government spending and identifying opportunities to promote efficient and effective spending. The Federal Government performs critical functions that support the basic protections that Americans have counted on for decades. As they serve taxpayers, executive departments and agencies (agencies) also must act in a fiscally responsible manner, including by minimizing their costs, in order to perform these mission-critical functions in the most efficient, cost-effective way. As such, I have pursued an aggressive agenda for reducing administrative costs since taking office and, most recently, within my Fiscal Year 2012 Budget. Building on this effort, I direct agency heads to take even more aggressive steps to ensure the Government is a good steward of taxpayer money.

Sec. 2. *Agency Reduction Targets.* Each agency shall establish a plan for reducing the combined costs associated with the activities covered by sections 3 through 7 of this order, as well as activities included in the Administrative Efficiency Initiative in the Fiscal Year 2012 Budget, by not less than 20 percent below Fiscal Year 2010 levels, in Fiscal Year 2013. Agency plans for meeting this target shall be submitted to the Office of Management and Budget (OMB) within 45 days of the date of this order. The OMB shall monitor implementation of these plans consistent with Executive Order 13576 of June 13, 2011 (Delivering an Efficient, Effective, and Accountable Government).

Sec. 3. *Travel.* (a) Agency travel is important to the effective functioning of Government and certain activities can be performed only by traveling to a different location. However, to ensure efficient travel spending, agencies are encouraged to devise strategic alternatives to Government travel, including local or technological alternatives, such as teleconferencing and videoconferencing. Agencies should make all appropriate efforts to conduct business and host or sponsor conferences in space controlled by the Federal Government, wherever practicable and cost-effective. Lastly, each agency should review its policies associated with domestic civilian permanent change of duty station travel (relocations), including eligibility rules, to identify ways to reduce costs and ensure appropriate controls are in place.

(b) Each agency, agency component, and office of inspector general should designate a senior-level official to be responsible for developing and implementing policies and controls to ensure efficient spending on travel and conference-related activities, consistent with subsection (a) of this section.

Sec. 4. *Employee Information Technology Devices.* Agencies should assess current device inventories and usage, and establish controls, to ensure that they are not paying for unused or underutilized information technology (IT) equipment, installed software, or services. Each agency should take steps to limit the number of IT devices (e.g., mobile phones, smartphones, desktop and laptop computers, and tablet personal computers) issued to employees, consistent with the Telework Enhancement Act of 2010 (Public Law 111–292), operational requirements (including continuity of operations), and initiatives designed to create efficiency through the effective implementation of technology. To promote further efficiencies in IT, agencies should

consider the implementation of appropriate agency-wide IT solutions that consolidate activities such as desktop services, email, and collaboration tools.

Sec. 5. *Printing.* Agencies are encouraged to limit the publication and printing of hard copy documents and to presume that information should be provided in an electronic form, whenever practicable, permitted by law, and consistent with applicable records retention requirements. Agencies should consider using acquisition vehicles developed by the OMB's Federal Strategic Sourcing Initiative to acquire printing and copying devices and services.

Sec. 6. *Executive Fleet Efficiencies.* The President's Memorandum of May 24, 2011 (Federal Fleet Performance) directed agencies to improve the performance of the Federal fleet of motor vehicles by increasing the use of vehicle technologies, optimizing fleet size, and improving agency fleet management. Building upon this effort, agencies should limit executive transportation.

Sec. 7. *Extraneous Promotional Items.* Agencies should limit the purchase of promotional items (e.g., plaques, clothing, and commemorative items), in particular where they are not cost-effective.

Sec. 8. *General Provisions.* (a) 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;

(ii) functions of the Director of OMB related to budgetary, administrative, or legislative proposals; or

(iii) the authority of inspectors general under the Inspector General Act of 1978, as amended.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are requested to adhere to this order.

(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,
November 9, 2011.

[FR Doc. 2011–29683
Filed 11–14–11; 11:15 am]
Billing code 3295–F2–P

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